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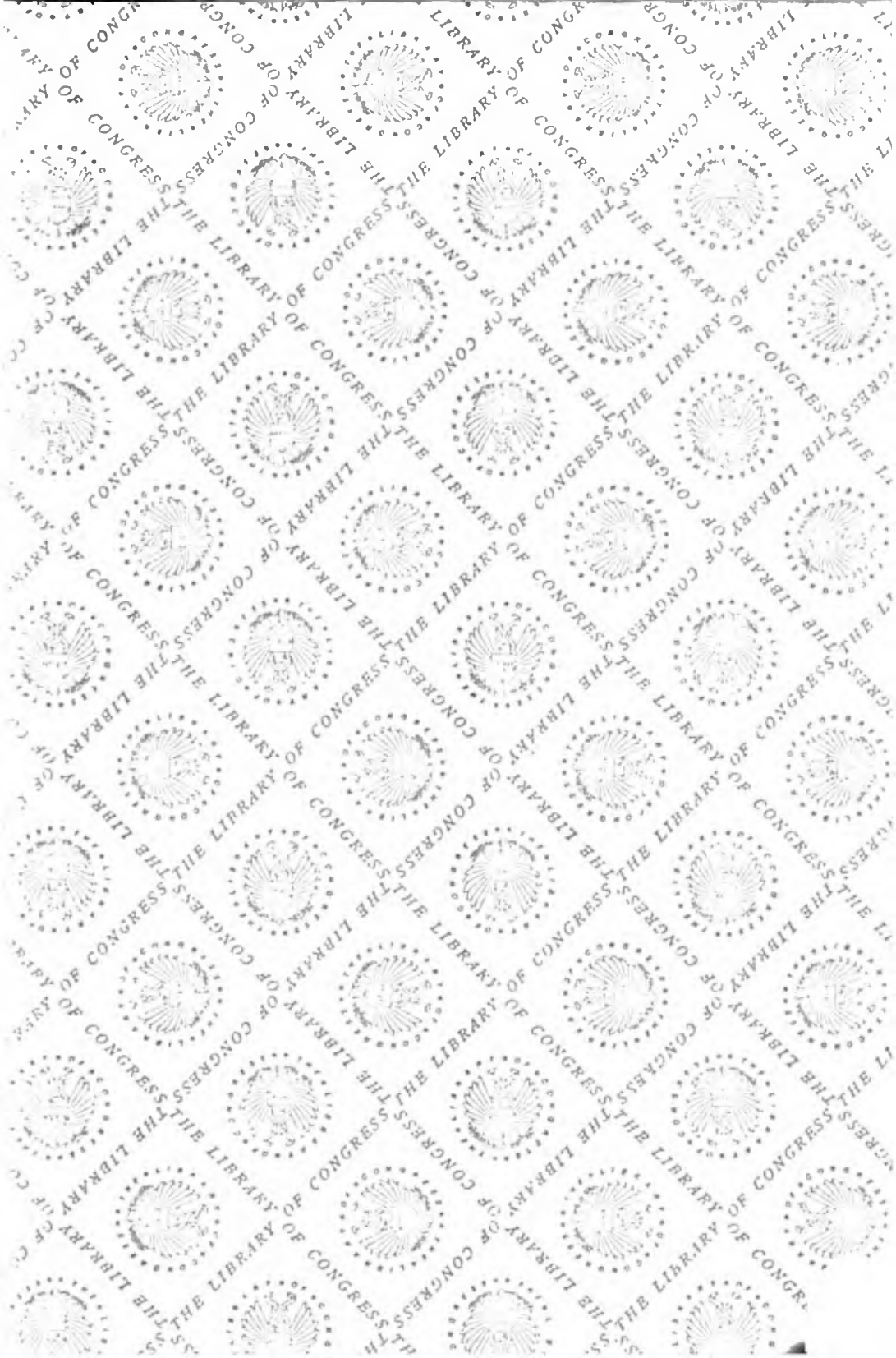

COURT INTERPRETERS ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 10228, H.R. 10129, and S. 1315

JULY 19, AUGUST 2, AND 9, 1978

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COURT INTERPRETERS ACT

WEDNESDAY, JULY 19, 1978

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:35 a.m., in room 2226, of the Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Drinan, Volkmer, Butler, and McClory.

Staff present: Thomas P. Breen, counsel; Helen Gonzales and Ivy L. Davis, assistant counsel; and Roscoe B. Starek III, associate counsel.

Mr. EDWARDS. The subcommittee will come to order. The hearing today is the first in a series of hearings which the subcommittee will hold regarding S. 1315, H.R. 10228, and H.R. 10129, legislation which would mandate interpreters in Federal criminal and civil proceedings. The bills would also make changes affecting the U.S. District Court for the District of Puerto Rico.

The testimony today will provide the subcommittee members with an overall introduction to the issues addressed by the legislation. On August 2 we will hear more detailed testimony pertaining to the provisions mandating language interpreters and interpreters for the hearing and speech impaired. On August 9, and, if necessary, on August 10, we will receive testimony from judges and other representatives from the Commonwealth of Puerto Rico regarding the proposed changes for the U.S. District Court of Puerto Rico.

The goal of this legislation is to insure that all persons are provided with an interpreter if their comprehension or communication capabilities, during Federal criminal or civil proceedings, may be inhibited because they speak a language other than the English language or because they have a hearing or speech impairment.

I share the conviction expressed back in 1925 by the Court of Appeals of Alabama in *Terry* v. *State* (15 S. 386, 387), that a defendant's right to confront witnesses implies that he or she must be accorded all the necessary means to understand that testimony. As the court stated:

> Mere confrontation of the witnesses would be useless, bordering on the farcical, if the accused could not hear or understand their testimony.

I want to take this opportunity to commend the chief sponsor of this legislation for his determined efforts to insure that due process and fairness are guaranteed in all Federal proceedings.

We are honored today to have the chief sponsor as our first witness, my good friend and a good friend of the committee's the distinguished gentleman from New York, Congressman Fred Richmond.

Congressman Richmond, we welcome you and we are delighted to have you. We congratulate you on the work you are doing in other areas as well. I also want to assure you that this subcommittee is very interested in this legislation, and that we intend to move it as fast as we can. You may proceed.

[The prepared statement of the Hon. Fred Richmond follows:]

STATEMENT BY HON. FRED RICHMOND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I want to thank you and the members of the Subcommittee for this opportunity to support legislation that is needed to rectify a current injustice in our Federal Court system.

The "Bilingual, Hearing, and Speech Impaired Court Interpreter's Act", which I introduced in December, 1977, attempts to remedy a grave inequity. This bill would ensure that a qualified interpreter be present whenever a person who does not communicate in English is involved in a Federal court proceeding.

Unfortunately, with the deaf community, this communication problem has long been overlooked because it is invisible. Our legal system has not lived up to the basic American ideal of equal justice and fairness to all. Deaf and non-English speaking Americans have been denied the fundamental right to a fair trial due to their inability to understand the court proceedings.

The Constitution guarantees every American access to the Federal courts through the 5th and 6th Amendments. If language-handicapped Americans are not given the Constitutionally established access to understand and participate in their own defense, then we have failed to carry out a fundamental American premise; fairness and due process for all.

The basic provisions of the Act are as follows:

The Director of the Administrative Office of the U.S. Courts is charged with the responsibility of establishing and certifying the qualifications of persons who will serve as interpreters in Federal courts in bilingual proceedings, including the hearing or speech impaired.

The Director shall be responsible for maintaining a current master list, as well as a schedule of fees for services rendered by interpreters which will be on file in each district court in the Federal system.

If in any criminal or civil action begun by the U.S., the presiding judicial officer determines that someone involved with the proceedings speaks a language other than English or suffers from a hearing or speech impairment, then the court will provide the necessary interpreting services.

The presiding officer shall obtain the services of the most available certified interpreter.

If the interpreter is unable to communicate effectively with any individual, another interpreter will be appointed.

The right to an interpreter may be waived in whole or in part only after the concerned party has consulted with his counsel and after the presiding judicial officer has explained to the person through an interpreter, the meaning and effect of the waiver.

Anyone who waives his right to such services may obtain the services of his own interpreter at his own expense.

The presiding judicial officer has the discretion to direct all or part of the expenses of the interpreter to be borne between the parties involved or shall be taxed as costs in a civil action. Otherwise, the interpreter's fees and costs shall be paid for from funds appropriated to the Federal judiciary.

In those actions where the Attorney General utilizes the services of an interpreter, the costs shall be paid from funds appropriated to the Department of Justice.

The presiding judicial officer may not exceed the maximum allowable set fees established by the Director.

Interpretations will be in the consecutive mode except where the court has determined that a summary interpretation will be adequate.

The Puerto Rico Federal Relations Act will be amended to provide that initial pleadings in the United States District Court for the District of Puerto Rico

may be filed in either the English or Spanish and subsequent proceedings shall be in the English language, unless one of the parties moves that they continue to be conducted in Spanish.

The written order and decisions of the court shall be in both English and Spanish; if an appeal is taken of a trial or proceeding conducted in Spanish, the record shall be translated into English. These translations shall be paid by the parties under the Judge's discretion.

No person shall be disqualified for service on a grand or petit jury summoned in Puerto Rico solely because that person is unable to speak, write, or read the English language if that same person is able to speak, write, or read the Spanish language.

If the Director finds that some districts need full or part-time interpreters, he has the discretion to appoint such interpreters and pay for these services under the relevant provisions of this Act.

The Director has the authority to promulgate and amend rules as he sees necessary to carry out his duties and may publish such rules in the Federal Register.

Finally, the Director may delegate any of his functions, powers, duties and authority (but not the duty to promulgate rules and regulations) to officers and employees of the Judicial Branch. Official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.

At my request, the Congressional Research Service compiled information regarding the number of men, women and children in the United States whose primary language is other than English. The total number of individuals whose primary language is not English is over 25,347,000. With the addition of the deaf community, the figure reaches 40 million.

Among these 40 million individuals, there are thousands, who, potentially, could benefit from this legislation.

Spanish speaking and deaf Americans comprise by far the largest numbers of people whose primary language is not English.

Of the more than 9.9 million Spanish-speaking Americans, over two million are Puerto Rican.

It is important to note that Puerto Rican Americans are not confined to New York. There are large numbers of Puerto Rican families in cities all across the nation—as far away as Hawaii—with large communities in New Jersey, Pennsylvania, Massachusetts, Ohio, Illinois, California and Florida.

Hispanic families are not the only ones who may suffer disadvantages as a result of court-related language disabilities. Representatives of all nationalities contribute to American culture and economy. Yet, if they don't speak English they are at a grooss disadvantage in court proceedings.

I am referring to millions of men and women whose primary language is not English:

> 15 million deaf people who use sign language or need oral interpretation; 9.9 million who speak Spanish; 2.8 million who speak Italian; 2.2 million who speak French; 2.2 million who speak German; half a million who speak Chinese; half a million who speak Japanese; almost half a million who speak Greek; almost 400,000 who speak Philippino; almost 350,000 who speak Portuguese; and over 5½ million more people speak "other" languages; including many thousands of native Americans.

The District which I represent—the 14th Congressional District of New York—is the most multi-ethnic District in the United States. Every country represented in the United Nations is represented in the Fourteenth District.

Close to 20 percent of my constituents are Hispanic, the vast majority of whom are Puerto Rican. There is also a large number of families—at least 10 percent of my constituents—whose primary language is Hebrew or Yiddish.

In addition, in this highly diverse District, there are many families whose primary language is Italian, Greek, Polish, Hungarian, various Arabic languages, and dozens of other languages from every corner of the world.

Many of these people would benefit from this legislation.

Nationwide, even in courts where interpreters are available for individuals who need help with translation and interpretation, there is no uniform procedure for utilization of interpreters.

Mr. Chairman, last Thursday, July 13, a deaf man came before U.S. Federal Magistrate, George E. Burgess in Greenbelt, Maryland on criminal charges. This man, who can neigher speak nor lip read, was denied the use of an interpreter.

In Boston, a deaf man was denied the use of an interpreter in Federal Tax Court. He could not afford to pay for the interpreter himself and his trial was postponed. The man moved to St. Paul where the trial was resumed and an interpreter finally appointed.

Last year, in Kansas a deaf man was denied the use of an interpreter during his Federal bankruptcy trial.

There have been a number of misinterpretations or no interpretations in cases involving Spanish-speaking defendants.

In the *Negron* case, the defendant, a 23 year old Puerto Rican American with a sixth grade education, was provided with an interpreter who merely gave the defendant a purported summary in Spanish of what had previously transpired in English. No continuous interpretation was provided. Consequently, Mr. Negron was convicted of murder and incarcerated. He petitioned the Federal court for a writ of habeas corpus which was granted on the grounds that the interpreting at his trial was so inadequate as to deprive him of due process. He was thus released and given a new trial. (434 F. 2d 386 (2d cir. 1970)).

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Several Federal convictions were reversed on due process grounds where no interpreter had been appointed and where the accused's knowledge of English was minimal or non-existent. (*U.S. ex rel Navarro* v. *Johnson*, 365 F. Supp. 676 (1973); *In re Muravior*, 192 Cal. App. 2d 604; *Parra* v. *Page*, 430 P. 2d 834 (1967)).

These are only a few of the cases which indicate the need for Federal legislation to set mandatory standards for the appointment of professional interpreters in our Federal courts.

The Administrative Office of the Courts estimates the cost of this legislation at less than $2 million annually. This seems to be a very small price to pay to ensure equal justice for all.

I believe that such Federal legislation will encourage state legislatures to enact similar legislation for the state and local courts where a considerable number of flagrant miscarriages of justice have occurred due to poorly qualified interpreters being used or no interpreters at all.

Consider for a moment that the 40 million people living in the U.S. today, whose primary language is not English, represent close to 20 percent of our population. Put together, over 80 Members of Congress would represent them alone. This is obviously a significant number of people who are asking, not an unreasonable thing: that if they are ever involved in a Federal Trial, they will be guaranteed the right to understand all the proceedings. In this great country of ours, the fact that they must even make such a request is a disgrace. I urge you to act swiftly to bring an end to this grotesque judicial oversight.

Thank you.

TESTIMONY OF HON. FRED RICHMOND, U.S. REPRESENTATIVE IN CONGRESS FROM THE 14TH DISTRICT OF NEW YORK

Mr. RICHMOND. Thank you so much, Mr. Chairman. I want to thank you and the members of the subcommittee for this opportunity to support legislation that is needed to rectify a current injustice in our Federal court system.

The Bilingual, Hearing, and Speech Impaired Court Interpreter's Act, which I introduced in December 1977, attempts to remedy a grave inequity. This bill would insure that a qualified interpreter be present whenever a person who does not communicate in English is involved in a Federal court proceeding.

Unfortunately, with the deaf community, this communication problem has long been overlooked because it is invisible. Our legal system has not lived up to the basic American ideal of equal justice and fairness to all. Deaf and non-English-speaking Americans have been denied the fundamental right to a fair trial due to their inability to understand the court proceedings.

The Constitution guarantees every American access to the Federal courts through the fifth and sixth amendments. If language-handicapped Americans are not given the constitutionally established access to understand and participate in their own defense, then we have failed to carry out a fundamental American premise—fairness and due process for all.

The basic provisions of the proposed act are as follows:

The Director of the Administrative Office of the U.S. Courts is charged with the responsibility of establishing and certifying the qualifications of persons who will serve as interpreters in Federal courts in bilingual proceedings, including the hearing or speech impaired.

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In this great country of ours, the fact that they must even make such a request is a disgrace. I urge you to act swiftly to bring an end to this unfair judicial oversight.

Thank you.

Mr. EDWARDS. Thank you, Mr. Richmond. It was very impressive testimony. It certainly gave us a lot of good information.

The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman. Congressman Richmond, I commend you. I am so overwhelmed with your arguments that I wonder whether there are any reasons against this bill, any argument on the other side? Can you think of one?

Mr. RICHMOND. No.

Mr. DRINAN. You can't?

Mr. RICHMOND. No, sir.

Mr. DRINAN. Tell me why those with hearing difficulties are linked with the non-English-speaking? Wouldn't it be better, since in that case it is so obviously clear cut, wouldn't it be better to just mandate an interpreter or mandate assistance for those who are hard of hearing?

Couldn't that go through by rule of the court? Do they need additional authority from us to provide a person to communicate with a person who is hard of hearing, either in a civil or a criminal case?

Mr. RICHMOND. In the Federal court right now there is no regulation demanding that deaf people are given the services of an interpreter.

Mr. DRINAN. But they are authorized to do so, are they not?

Mr. RICHMOND. They can if they wish. But they are not mandated to. Which is why in one of the cases I cited the deaf man didn't have an interpreter.

Mr. DRINAN. Overall, how good are they in doing what they are authorized to do when someone whose hearing is impaired comes before them?

Aside from the cases you mentioned, is there any widespread practice of denying this service? Generally, do the judges and the magistrates, in fact, give a person who is hard of hearing what that individual needs?

Mr. RICHMOND. From what we can find out, in some cases they get it, and in some cases they don't. That is why we felt the legislation was necessary. In other words, we would like to mandate that any person who is deaf should have the opportunity to have a proper interpreter.

Mr. DRINAN. I have no quarrel with that. But it seems to me that any Federal judge, any magistrate, would simply do that the moment he understands the condition of his accused or the defendant, or even in civil litigation.

But above and beyond that, the problem obviously is widespread and I am a little surprised that it would only cost $2 million. That is rather nominal really compared to the problem you outlined.

I have had correspondence over a long period with lawyers and judges from Puerto Rico, and they feel very, very strongly about this. I thank you for the initiative you have taken, and I hope that we can get to this matter and follow along the lines of your good reasoning. So thank you very much.

Mr. RICHMOND. Thank you very much, Father Drinan.

Mr. EDWARDS. Before I recognize Mr. Butler, I would like to point out to the subcommittee members and the witnesses that for the benefit of deaf persons in the audience, we are being assisted today by a certified interpreter for the deaf, who was made available to us through the Gallaudet School for the Deaf. The interpreter is Linda Champion. I want to thank her for assisting us today.

The gentleman from Virginia.

Mr. BUTLER. Thank you, Mr. Chairman. I am sorry I was late in attending this hearing this morning. However, I have read your testimony, and I appreciate the very fine presentation and summary of the legislation you have made.

I do have a couple of problems. Let's turn briefly to the subject of bankruptcy, because that is near and dear to the heart of this subcommittee.

Most of us have been here so long we are ready for bankruptcy. The deaf man to whom you referred was denied the use of an interpreter during his Federal bankruptcy trial. I assume he was the debtor?

Mr. RICHMOND. Yes, he was.

Mr. BUTLER. Let's think in terms of what under this legislation would be the rights in a bankruptcy proceeding. Would every claimant be entitled to an interpreter during all of the proceedings?

Mr. RICHMOND. I think with the interpretation of this bill, Mr. Butler, it seems to me every claimant would have the right to have an interpreter. If one of our deaf Americans has a proceeding before a Federal court, unless he has an interpreter, he is really not participating in the proceeding.

Mr. BUTLER. Yes, that is true. It is just that we have to recognize that we are going to reach a point where we have to draw a line based on the degree of involvement, for example, the degree of involvement in the proceeding of a claimant who may have only a remote possibility of recovering.

There is also a strong possibility, since we are talking about 20 percent of the American population, that 20 percent of all the claimants would be entitled to an interpreter of some form.

Mr. RICHMOND. Not necessarily, Mr. Butler.

Mr. BUTLER. That 20 percent sounds to me like statistically every single bankruptcy proceeding is going to face the strong possibility of having to have an interpreter standing by. That is going to get pretty expensive.

I am wondering if perhaps we haven't overshot the issue in this case?

Mr. RICHMOND. In the case of a bankruptcy, the claimant is, by and large, probably a supplier of some sort, who speaks English.

On the other hand, he might have employees who are claimants.

Mr. BUTLER. We have a lobby in the Congress that has given the consumers a strong voice.

Mr. RICHMOND. Let's say a Puerto Rican consumer, Puerto Rican employee of a bankrupt firm wanted to testify before a referenee in bankruptcy on his own behalf, or on behalf of a number of other employees of that factory. Doesn't that person need an interpreter?

Mr. BUTLER. I am thinking about the person that has purchased an item on a layaway plan, put $5 down on the layaway, and later the company has gone bankrupt. He is now in a position where he is a priority creditor, and he is entitled to know what is going on in the

bankruptcy proceeding. If we mandate interpreters, that $5 claim is going to put us in a position where we have to provide interpreters in all of those situations.

Mr. RICHMOND. I think perhaps in the case of a $5 claim, that is unnecessary.

Mr. BUTLER. Where would you draw the line then?

Mr. RICHMOND. I would leave that to your committee, Mr. Butler. I am sure your outstanding chairman of the committee can figure that one out.

Mr. BUTLER. That is what I am looking for. Where are we going to draw the line? Obviously there is somewhere where we have to draw the line. I don't know whether it is in the legislation or not.

Mr. RICHMOND. An interpreter at $15 an hour is not terribly expensive. And if the claim is substantial enough to have the claimant come into court and spend the day in court arguing his claim, perhaps that claimant ought to have the right to an interpreter when he is before the referee in bankruptcy.

Mr. BUTLER. Perhaps it could leave marginal situations to the discretion of the trial judge, and not included in the legislation.

Mr. RICHMOND. Of course.

Mr. EDWARDS. That was a good question. We will have to have lots of legislative history on that to guide the people who are running the court system.

The gentleman from Illinois.

Mr. MCCLORY. Thank you very much, Mr. Chairman. I am pleased to observe that we have an interpreter this morning from Gallaudet College. I had the privilege of participating in a session at Gallaudet just the other evening where we discussed the impact of the proposed conversion to the metric system of weights and measures and its effect on the deaf or those with limited hearing.

On that occasion my remarks were interpreted by a certified interpreter such as the one we have present this morning.

I am concerned only, Mr. Richmond, with the possibility of overkill. Certainly the purpose and objective of this bill is laudatory. I am wondering if the existing law, which provides the opportunity for the courts to provide interpreters on a discretionary basis, without mandating it, shouldn't be reinforced in some way, so that we do not get ourselves involved in a program such as the amendments to the Voting Rights Act. Those amendments have imposed terribly expensive burdens on communities and States by requiring the printing of ballots and election information in a variety of languages based upon the ethnic backgrounds of people. Many of these voters are erroneously placed in an ethnic category when their fluency in English is far greater than their fluency in some foreign language in which we now require ballots to be printed.

Don't you feel that these mandatory provisions are going to, in effect, overburden us with a bureaucracy, with regulations and requirements that should be capable of being supplied under the permissive legislation that exists at this time?

In other words, the court at the present time can and should provide an interpreter. Apparently some of the courts simply do not exercise good judgment. What is your view on that?

Mr. RICHMOND. Mr. McClory, I mentioned four rather important cases where interpreters were not used, and as a result the four defendants or plaintiffs were not accorded adequate justice.

Now since that practice seems to be relatively widespread, it appears to me it might be necessary to enact enabling legislation to instruct the Director to mandate that there should be interpreters in all cases where one of these 40 million people has a case pending before court, if he or she wishes it.

It is only giving them equal rights under the law. They certainly don't have equal rights under the law if they can't understand what is happening, can they?

Mr. McCLORY. I agree entirely that we have to provide interpretation, including the important interpretation for the deaf or those with limited hearing. Yet, do we have any concept of what the scope of the expense and the personnel necessary would be if we had this program mandated?

Mr. RICHMOND. Yes, Mr. McClory. Our research shows it would cost $2 million, and each interpreter would charge roughly $15 an hour. Of course every judge would have a panel of interpreters in his or her area.

Mr. McCLORY. I see.

Mr. RICHMOND. It seems to me a relatively modest amount of money to reaffirm the rights of the Constitution to 40 million Americans.

Mr. McCLORY. These interpreters, will they be permanent Federal employees, such as the clerks and reporters are?

Mr. RICHMOND. No, sir, they would just be members of a panel, a prescreened panel of interpreters, who would be called in in the event that there was a non-English-speaking person before a court proceeding.

Mr. McCLORY. You have given very impressive testimony. I certainly want to applaud you for your analysis and for the detailed information you have provided us with respect to the large number and the different groups of people in our country who require this kind of service. I appreciate your contribution.

Mr. RICHMOND. Thank you, Mr. McClory.

Mr. EDWARDS. Thank you very much for excellent testimony.

Mr. RICHMOND. Thank you, Mr. Chairman. I would like very much to include three pages of possible questions and answers with my testimony.

Mr. EDWARDS. Without objection, they will be included in the record.

POSSIBLE QUESTIONS AND ANSWERS

Question 1. Why is it important to mandate provision of interpreters, instead of allowing the courts to continue with the present system?

Answer. It's important to do so in the interest of justice and uniformity in the federal system. Also to provide a much needed model for the state legislatures so they can revise and update their interpreter rules.

Question 2. When should the judge determine whether the person should be provided an interpreter?

Answer. Initially, it should be the defendant's counsel who informs the court and makes the request for such a service; ultimately it is up to the presiding judicial officer to make that decision.

Question 3. What groups should the Director consult before placing qualified interpreters on the courts' interpreter list?

Answer. Those established groups (i.e. Registry of interpreters for the Deaf) that set up evaluation boards and issue certification should be consulted as to available and qualified interpreters.

Question 4. Why should every defendant, not just the indigent defendants, receive such a service?

Answer. In prior Senate testimony, this service has been deemed so necessary and crucial in terms of fairness and due process, that interpreter costs are considered part of the maintenance costs of the court and not in litigation.

However, in civil cases, the judge has the discretion and authority when he deems it appropriate, to allocate the costs of the interpretation between the parties.

Question 5. Why is it necessary to get a qualified, certified interpreter?

Answer. Such an interpreter will greatly lessen the chance of faulty interpretation and thereby reduce the number of cases that had to be reversed on the appellate level and remanded to the original court for a retrial with a qualified, certified interpreter present.

Question 6. What is the present rate for court-appointed interpreters?

Answer. $15 an hour in D.C. and Maryland.

Question 7. What happens if the community or a state like North Dakota has no qualified Chinese interpreter? and a Chinese-speaking person is charged with a federal offense.

Answer. The bill has a provision that states if no certified interpreter can be found, then a person who is fluent in both languages can be used. However, in the interest of fairness, a qualified, certified interpreter could be brought into this court from the nearest district court. The cost should not matter when a man's life, property, or liberty are at stake.

Question 8. At what stages of the court proceedings can the interpreter be waived?

Answer. This should be left to the presiding judicial officer as well as defendant's counsel at such stages such as the voir dire of jurors, technical expert witnesses (a summary interpretation could be provided), etc. But both counsel and the judge must explain to the defendant what his rights are.

Question 9. What happens if the defendant speaks no English and a non-English witness for the government or the Attorney General appears to testify, should we provide two interpreters? Or will one suffice?

Answer. Since defendant and defense counsel most likely cannot communicate directly with each other, which necessitates the interpreter's presence at defense table during the proceedings; in the interest of fairness and due process, it would be best if the government provided a separate interpreter for that witness. This way defense interpreter can let defense know about possible slanting of interpretation which should not happen once the bill is set up but unfortunately may occur and defense can challenge the interpretation of the government witness' testimony. On the other hand, if the same interpreter is used for both the defendant and the government witness, this may cause a problem with respect to the interpretation of government witness as he/she may be prejudiced.

Question 10. In the Puerto Rican section of the bill: major concern for the federal judges in this circuit is the fact that the judges and lawyers speak English while the people appearing in their courts speak Spanish.

One problem now is that English is used in criminal cases which means that the jury has to be fluent in English. However, in Constitutional terms, this segment of Puerto Rican society which speaks English is a limited cross-representation of the local community.

A possible question could be: What would be the cost of having to prepare and provide separate Spanish speaking jury lists (also known as juror wheels) as well as English speaking juror wheels?

Answer. (One suggestion is the Senate testimony was that Puerto Rico use only people who spoke both languages fluently; but again we come up against the problem that this group is not a broad cross-section of the community). Costs are unknown at present, but realistically they should not run over $2 million annually, which is the estimated cost for all the sections of the bill in the continental U.S.

Mr. EDWARDS. Our next witness is our colleague from Puerto Rico, Hon. Baltasar Corrada, Resident Commissioner of Puerto Rico.

[The prepared statement of Hon. Baltasar Corrada follows:]

STATEMENT OF HON. BALTASAR CORRADA, RESIDENT COMMISSIONER OF PUERTO RICO, U.S. HOUSE OF REPRESENTATIVES

Mr. Chairman and members of the Subcommittee. My name is Baltasar Corrada, I am the Resident Commissioner of Puerto Rico to the House of Representatives, and the sole representative in Congress of 3.2 million Puerto Ricans.

I wish to take this opportunity to thank you for inviting me to present testimony concerning Section 3 and 4 of H.R. 10228, the Bilingual Court Act.

On November 29, 1977, I introduced H.R. 10129, an identical bill to H.R. 10228 and to S. 1315, which was passed by the Senate on November 8, 1977. H.R. 10228 is geared to provide more effectively for the use of interpreters in courts of the United States and to allow the use of Spanish in the United States District Court for the District of Puerto Rico (hereinafter the District Court of Puerto Rico) when it is found by the court to be in the interest of justice. In essence the purpose of the bill is to insure that all participants in our Federal courts can meaningfully take part in the proceedings by assuring qualified interpreters to those who do not speak or understand English, or have a hearing or speech impairment.

In addition, the bill will improve judicial efficiency by permitting persons in Puerto Rico who are parties or witnesses in criminal and civil proceedings a much better understanding of such proceedings by allowing the use of the Spanish language when the court, in the interest of justice, so determines. I fully support this legislation and will do my utmost to secure its approval by the House.

H.R. 10228 is a significant and necessary piece of legislation. Up to the present time the right of parties to have interpretation services has been protected by the Federal Rules of Civil Procedure, Rule 43(b), the Federal Rules of Criminal Procedure, Rule 28(b) and the Criminal Justice Act of 1964. Hence, time has come for providing by statute access to qualified interpreters and to expand the spectrum of people that might be entitled to such services. If this legislation is enacted, a positive step will be taken in insuring that all persons before the Federal courts are able to comprehend and participate in the judicial process. However, this could not be a complete reform or implementation of a bilingual court program unless the necessary reforms are also made to existing language problems in the District Court of Puerto Rico, a situation which is unique in the federal court system given the fact that the District Court in Puerto Rico is serving a Spanish speaking society.

Running parallel to the problems intended to be solved by this legislation in all judicial districts is the converse language situation in the District Court of Puerto Rico. How could we explain or sustain that when we have a Puerto Rican judge, a Puerto Rican defense attorney, a Puerto Rican United States Attorney, Puerto Rican witnesses, Puerto Rican United States marshalls, and a Puerto Rican Clerk the procedures before the Court should be conducted in English? The same situation occurs more often than not in civil cases. This is an anomalous situation that should be corrected now and its solution should not be posponed or delayed by any reason whatsoever. It is a vestige of colonialism, which is unacceptable to the people of Puerto Rico, our culture and traditions.

Puerto Rico is a Spanish-speaking society. According to the findings made by the Senate Committee on the Judiciary, the District Court for Puerto Rico sits in a judicial district in which half the population does not speak English. Census figures for 1970 indicate that 57.3 percent of the people over the age of 10 living in Puerto Rico do not speak English. Those figures also state that 59.2 percent of the women and 75.2 percent of persons over 60 speak no English. Furthermore, persons who were classified by the Census Bureau as being able to speak English were so classified if they reported that they were able to speak English. For this reason, the percentages cited above in all probability overstate the percentage of people able to comprehend complicated judicial proceedings conducted in English.

However, and despite those findings, Federal law still provides that all proceedings in the District Court for Puerto Rico be conducted in English. Since 1917 all pleadings and proceedings in the District Court for Puerto Rico are conducted in the English language and extensive use of interpreters in both civil and criminal cases has been the practice of the court for years.

The ability to understand the language is critical to the fairness of the proceedings. The existing situation in the District Court for Puerto Rico is not the most effective nor the most fair way to operate the proceedings before the court. The most appropriate solution to this anachronism is the enactment of sections 3 and 4 of H.R.10228. This will do much to effectuate the guarantees of equality of all persons before the court. The existing situation not only creates problems for parties and witnesses to civil and criminal proceedings but also eliminates half the population from possible jury service. According to the Senate Committee on the Judiciary, the English language requirement for jury service results in a jury panel

which is often more "white collar" than would be a cross section of the general population of the island. This runs against the policy of the "Jury Selection and Service Act of 1968", Public Law 90-274, (28 USC 1861), which provides that "all litigants in Federal courts entitled to trial by jury shall have the right to . . . juries selected at random from a fair cross-section of the community." Furthermore, present situation denies over half the population of Puerto Rico the right to serve on a Federal jury and this also runs contrary to said Act which provides in its policy that "all citizens shall have the opportunity to be considered for service". H.R. 10228 will correct this situation.

You may be hearing arguments in opposition to some of the concepts embodied in sections 3 and 4 of this bill. Chief Judge Jose V. Toledo believes that at the present time the use of Spanish in the District Court for Puerto Rico should be limited to criminal cases only and opposes its implementation to civil cases. On June 29, I wrote a letter to the Chairman of this Subcommittee stating my comments to the points raised by Chief Judge Toledo in his June 13 letter regarding sections 3 and 4 of H.R. 10228. Chief Judge Toledo shares common grounds with me in the feasibility of allowing the use of Spanish in the District Court for Puerto Rico when he agrees that Spanish should be used to conduct the proceedings in criminal cases. However, he raises objections of an administrative nature to the use of Spanish in civil proceedings. After a thorough consideration of Chief Judge Toledo's allegations, the legal precedents, and the existing record of previous actions taken by Congress, I have concluded that Judge Toledo is only concerned over the possible overload of the civil calendar of the Court if Spanish is allowed in the court. He may not have at the present time the administrative resources to effectuate this reform. But this is an administrative problem which is expected to arise when important changes are made to any system.

I am aware that some inconveniences may arise. The court, for example, will have to make determinations on the question of the optional use of Spanish whenever that issue is raised. However, such inconveniences would be more than justified given the great improvement in the process of doing justice in an essentially Spanish speaking society resulting from the enactment of this bill.

Furthermore, the bill provides for Spanish as an optional language, and the court will have the instruments to allow for an orderly transition in accordance with administrative resources made available to it. Chief Judge Toledo also asserts that the provisions of the bill might transform the District Court for Puerto Rico from an English speaking court into a bilingual court. As a matter of fact, the District Court for Puerto Rico has been and is a bilingual court, albeit with English as the main language.

In addition, I would like to discuss certain significant developments in this 2nd session of the 95th Congress that have a bearing on this matter. The House and Senate are having a conference to reconcile their differences on the Omnibus Judgeship bill, H.R. 7843 and S. 11. It has been agreed by the conferees that the District Court for Puerto Rico will have four new judgeships. Thus, it is expected that the present workload of the Court will be reduced to satisfactory levels when instead of three we will have seven judges. The House Committee on the Judiciary reported favorably its version of S. 1613, the "Magistrate Act of 1977", which passed the Senate on August 3, 1978. Furthermore, the House passed on February 28, 1978, H.R. 9622 virtually eliminating the diversity of citizenship jurisdiction in the Federal courts. I was advised that the Senate Judiciary Committee has still under consideration S. 2389 and S. 2094, both bills limiting diversity of citizenship cases, and they have not decided as to what version they will be reporting out. However, they expect to take some action during this second session of the 95th Congress.

These bills are indicative of the tendency to ease out Federal courts' heavy calendar. One of Judge Toledo's concerns, the adverse impact of a potential increase in the diversity cases pending in Puerto Rico's state courts, which might otherwise be filed in the District Court for Puerto Rico if Spanish is allowed, would be dispelled as a threat to his heavy calendar by the curtailment of this type of case as a result of congressional action.

On January 4, 1978, United States District Court Judge Juan R. Torruella wrote a letter to the Hon. Peter Rodino, Chairman of the House Committee on

the Judiciary, contending that sections 3 and 4 of H.R. 10228, if enacted would create:

(*a*) Lack of uniformity in the Federal judicial system,

(*b*) Legal problems on its implementation,

(*c*) Effectively isolate the United States District Court for the District of Puerto Rico from other districts,

(*d*) And raise serious constitutional and policy questions.

According to a study made by the Congressional Research Service (CRS), at my request, they have been unable to find any precedent which would indicate that the provisions of section 3 and 4 of H.R. 10228 have constitutiona linfirmities. However, CRS also concluded that enactment of such provisions will have various adverse effects such as those cited by the Court in *United States* v. *Valentine* 288 F. Supp. 957 (DCPR 1968). But if the Subcommittee looks in detail to the alleged *Valentine* adverse impact effects, it has to conclude and agree that said effects are mere administrative inconveniences.

Among other authorities quoted, Judge Torruella relies on *Valentine* to buttress his arguments in opposition to sections 3 and 4. In *Valentine* the Court stated: ". . . The basic civil functions of Federal District Court in offering an opportunity to non-residents of resorting to a tribunal not subject to local influence", (see *Balzac* v. *People of Puerto Rico*, supra, 258 U.S. at 312, 42 S. Ct. at 348) "would be compromised and unreasonably restricted here, were litigants forced, in order to avail themselves of the facilities of this court, to litigate through interpreters in a language other than English." This will not happen with the enactment of sections 3 and 4 of H.R. 10228, nor do we have here an insurmountable legal problem. Section 3 of the bill provides that "Initial pleadings in the U.S. District Court for the District of Puerto Rico may be filed in either the Spanish or English language and all further pleadings and proceedings shall be in the English language, unless upon application of a party or upon its own option, the court, in the interest of justice, orders that the further pleadings or proceedings, or any part thereof, shall be conducted in the Spanish language."

The District Court for Puerto Rico will remain a tribunal not subject to local influence. The judges there will continue to be appointed for life by the President of the United States with the consent of the Senate. Furthermore, the court will retain its authority and will have discretion to decide which cases should be conducted in English. Hence, the legal rights of nonresidents and non-Spanish-speaking persons would remain protected as they presently are. It is in the interest of justice and when all circumstances are met that this discretionary authority will be used.

The U.S. Department of Justice in a letter to Chairman Rodino dated May 12, 1978, regarding sections 3 and 4, expressed support for their enactment, and I quote: "The section of the bills concerning the district court for the District of Puerto Rico enjoys the Department's strong support. In many actions, both civil and criminal, in the District of Puerto Rico everybody in the courtroom, speaks Spanish, but many do not speak English. Yet under current law all the proceedings must be conducted in English. The bills provide that the judge may allow proceedings to be conducted in Spanish. This is expected to result in a substantial savings in the cost of interpreters for the District of Puerto Rico and to increase the fairness of proceedings held in that court."

Some may raise the question of potential limitation on judges from other districts sitting by designation in the District Court for Puerto Rico when needed. I do not believe this will be a serious problem. It will be the responsibility of the Clerk of the Court to place in the calendar of visiting judges those cases in which the English language will be used.

In its study the CRS raises a question with respect to jury selections which I should discuss. The decision in *United States* v. *Ramos Colón*, 415 F. Supp. 459 (1976) indicates that "of 4,262 questionnaires recently sent to prospective jurors in Puerto Rico, 3522 or 83% indicated that the persons involved were disqualified because of insufficient English proficiency.

If this is representative of the entire population of otherwise eligible jurors in Puerto Rico, section 4, which would prohibit the disqualification for service as a juror of any person not proficient in English if he is proficient in Spanish, would doubtless have the effect of causing every jury to have perhaps a majority of

jurors unable adequately to use English". CRS also stated that "If this is true, every jury trial would have to be conducted in the Spanish language for otherwise the non-English-speaking jurors would be unable effectively and intelligently to perform their duties as jurors. See, e.g., *Miranda* v. *U.S.*, 225 F. 2d 9, 16–17, (CA 1). Thus, the permissive language of section 3 concerning pleadings and the conduct of trials in Spanish would appear currently to be inoperative."

This problem was discussed by the Senate Committee on the Judiciary by stating in the report on S. 1315 that ". . . The bill does not address the manner by which the district court would develop a jury wheel for cases to be conducted in Spanish. At present the jury wheel would of course include only persons who speak English; however, most of those who do speak English also speak Spanish and therefore would be eligible for cases conducted in Spanish as well. The responsibility for developing methods of juror selection is already statutorily assigned to each district court, 28 U.S.C. 1862." Furthermore, the report also said that "The district court in Puerto Rico would be best qualified to develop a proper procedure for the selection of jurors for such cases, and the committee does not find it necessary to develop such procedures in this legislation."

The District Court for Puerto Rico should find a workable solution to this problem in accordance with its needs. The court has the experience and expertise to establish the mechanisms for an adequate and workable jury wheel.

To conclude, I fully support and urge you to support H.R. 10228 for the following reasons:

(1) The administration of justice in any community should allow proceedings to be conducted in the language of that community, even in a court which forms part of a federal system of a country where another language is the prevalent language.

(2) Sections 3 and 4 of H.R. 10228 will improve due process and quality of justice to litigants in Puerto Rico.

(3) If Spanish were used, the trial time in cases would be reduced by the amount of time it takes in court interpreters to translate the proceedings from Spanish to English and English to Spanish.

(4) Allowing some proceedings to be conducted in Spanish will in no way jeopardize the rights of those parties who prefer to have the proceedings conducted in English.

(5) If Spanish were to be allowed, those attorneys who do not litigate in the Federal Court because they do not feel their mastery in English is good enough to allow them to represent their clients adequately, would begin to protect their clients interest in the most appppropriate forum whether State or Federal.

(6) Once Spanish speaking attorneys are allowed to plead in Spanish, and try their cases in Spanish they will go to the Federal Court in order to get the benefit of a jury trial in civil cases which they do not get in the Puerto Rican state courts and to claim the benefits of Federal rights more effectively.

(7) On the merits the bill represents a positive step toward guaranteeing a better quality of justice to litigants in Puerto Rico.

Finally, I urge you to favorably recommend the enactment of this bill with the provisions pertaining to Puerto Rico. In the balance of convenience, justice has much more weight than the administrative problems suffered by those in charge of its administration. Thank you.

TESTIMONY OF HON. BALTASAR CORRADA, RESIDENT COMMISSIONER OF PUERTO RICO

Mr. Corrada, we are delighted to have you with us. Without objection, your full statement will be made a part of the record and you may proceed.

Mr. CORRADA. Thank you, Mr. Chairman. My name is Baltasar Corrada, and I am the Resident Commissioner of Puerto Rico to the House of Representatives, and the sole representative in Congress of 3.2 million Puerto Ricans.

I wish to take this opportunity to thank you for inviting me to present testimony concerning sections 3 and 4 of H.R. 10228, the Bilingual Court Act.

On November 29, 1977, I introduced H.R. 10129, an identical bill to H.R. 10228 and to S. 1315, which was passed by the Senate on

November 8, 1977. H.R. 10228 is geared to provide more effectively for the use of interpreters in courts of the United States and to allow the use of Spanish in the U.S. District Court for the District of Puerto Rico when it is found by the court to be in the interest of justice.

In essence, the purpose of the bill is to insure that all participants in our Federal courts can meaningfully take part in the proceedings by assuring qualified interpreters to those who do not speak or understand English, or have a hearing or speech impairment.

In addition, the bill will improve judicial efficiency by permitting persons in Puerto Rico who are parties or witnesses in criminal and civil proceedings a much better understanding of such proceedings by allowing the use of the Spanish language when the court, in the interest of justice, so determines.

May I say the provision with respect to Puerto Rico is the optional use of Spanish at the discretion of the court. It is not the mandatory use of Spanish under all circumstances.

I fully support this legislation and will do my utmost to secure its approval by the House.

H.R. 10228 is a significant and necessary piece of legislation. Up to the present time, the right of parties to have interpretation services has been protected by the Federal Rules of Civil Procedure, rule 43(b), the Federal Rules of Criminal Procedure, rule 28(b), and the Criminal Justice Act of 1964. Hence, the time has come for providing by statute access to qualified interpreters and to expand the spectrum of people that might be entitled to such services.

If this legislation is enacted, a positive step will be taken in insuring that all persons before the Federal courts are able to comprehend and participate in the judicial process. However, this could not be a complete reform or implementation of a bilingual court program unless the necessary reforms are also made to existing language problems in the District Court of Puerto Rico, a situation which is unique in the Federal court system, given the fact that the District Court in Puerto Rico is serving a Spanish-speaking society.

Running parallel to the problems intended to be solved by this legislation in all judicial districts is the converse language situation in the District Court of Puerto Rico. How could we explain or sustain that when we have a Puerto Rican judge, a Puerto Rican defense attorney, a Puerto Rican U.S. attorney, Puerto Rican witnesses, Puerto Rican U.S. marshals, and a Puerto Rican clerk, the procedures before the court should be conducted, at all times, under all circumstances, in English?

The same situation occurs more often than not in civil cases. This is an anomalous situation that should be corrected now and its solution should not be postponed or delayed by any reason whatsoever.

We have been waiting since the year 1917 for a solution. The Senate has already passed similar provisions as in this bill, and I would hope, Mr. Chairman, that under your leadership this subcommittee and the full committee do not delay action on sections 3 and 4, which have been a longstanding problem.Again I believe it is a modest approach we are following here. Perhaps in the long run other revisions ought to be made. But this is a very modest approach, merely allowing optional use of Spanish at the discretion of the court and in the interestof justice.

This situation is a vestige of colonialism, which is unacceptable to the people of Puerto Rico, our culture, and traditions.

Puerto Rico, as you know, is a Spanish-speaking society. According to the findings made by the Senate Committee on the Judiciary, the District Court for Puerto Rico sits in a judicial district in which half the population does not speak English. Census figures for 1970 indicate that 57.3 percent of the people over the age of 10 living in Puerto Rico do not speak English. Those figures also state that 59.2 percent of the women and 75.2 percent of persons over 60 speak no English.

Furthermore, persons who were classified by the Census Bureau as being able to speak English were so classified if they reported that they were able to speak English. For this reason, the percentages cited above in all probability overstate the percentage of people able to comprehend complicated judicial proceeding conducted in English.

However, and despite those findings, Federal law still provides that all proceedings in the District Court for Puerto Rico must be conducted in English. Since 1917 all pleadings and proceedings in the District Court for Puerto Rico are conducted in the English language and extensive use of interpreters in both civil and criminal cases has been the practice of the court for years.

The ability to understand the language is critical to the fairness of the proceedings. The existing situation in the District Court for Puerto Rico is not the most effective nor the most fair way to operate the proceedings before the court. The most appropriate solution to this anachronism is the enactment of sections 3 and 4 of H.R. 10228. This will do much to effectuate the guarantees of equality of all persons before the court. The existing situation not only creates problems for parties and witnesses to civil and criminal proceedings, but also eliminates half the population from possible jury service.

According to the Senate Committee on the Judiciary, the English language requirement for jury service results in a jury panel which is often more "white collar" than would be a cross-section of the general population of the island. This runs against the policy of the Jury Selection and Service Act of 1968, Public Law 90–274 (28 U.S.C. 1861), which provides that:

> All litigants in Federal courts entitled to trial by jury shall have the right to juries selected at random from a fair cross-section of the community.

Furthermore, the present situation denies over half the population of Puerto Rico the right to serve on a Federal jury and this also runs contrary to said act, which provides in its policy that: "All citizens shall have the opportunity to be considered for service."

H.R. 10228 will correct this situation. You may be hearing arguments in opposition to some of the concepts embodied in sections 3 and 4 of this bill. Chief Judge Jose V. Toledo, an excellent friend of mine and a very able and competent judge, believes that at the present time the use of Spanish in the District Court for Puerto Rico should be limited to criminal cases only, and opposes its implementation to civil cases.

On June 29, I wrote a letter to you, Mr. Chairman, stating my comments to the points raised by Chief Judge Toledo in his June 13 letter regarding sections 3 and 4 of H.R. 10228. Chief Judge Toledo shares common grounds with me in the feasibility of allowing the use of Spanish in the District Court for Puerto Rico when he agrees that

Spanish should be used to conduct the proceedings in criminal cases. However, he raises objections of an administrative nature to the use of Spanish in civil proceedings.

After a thorough consideration of Chief Judge Toledo's allegations, the legal precedents, and the existing record of previous actions taken by Congress, I have concluded that Judge Toledo is mainly concerned over the possible overload of the civil calendar of the court if Spanish is allowed in the court. He may not have at the present time the administrative resources to effectuate this reform. But in my mind this is an administrative problem which is expected to arise when important changes are made to any system.

I am aware that some inconveniences may arise. The court, for example, will have to make determinations on the question of the optional use of Spanish whenever that issue is raised. However, such inconveniences would be more than justified given the great improvement in the process of doing justice in an essentially Spanish-speaking society resulting from the enactment of this bill.

Furthermore, the bill provides for Spanish as an optional language and the court will have the instruments to allow for an orderly transition in accordance with administrative resources made available to it. Chief Judge Toledo also asserts that the provisions of the bill might transform the District Court for Puerto Rico from an English-speaking court into a bilingual court. As a matter of fact, the District Court for Puerto Rico has been and is a bilingual court, albeit with English as the main language.

In addition, I would like to discuss certain significant developments in this 2d session of the 95th Congress that have a bearing on this matter. The House and Senate are having a conference to reconcile their differences on the omnibus judgeship bill, H.R. 7843 and S. 11. It has been agreed by the conferees that the District Court for Puerto Rico will have four new judgeships. Thus, it is expected that the present workload of the court will be reduced to satisfactory levels when, instead of three, we will have seven judges, more than doubling the number of Federal judges in that district.

The House Committee on the Judiciary reported favorably its version of S. 1613, the Magistrate Act of 1977, which passed the Senate on August 3, 1977, which should also help to expedite the work of the court.

Furthermore, the House passed on February 28, 1978, H.R. 9622, virtually eliminating the diversity of citizenship jurisdiction in the Federal courts. Also, 19 percent of the civil cases in the district of Puerto Rico are diversity cases. I was advised that the Senate Judiciary Committee has still under consideration S. 2389 and S. 2094, both bills limiting diversity of citizenship cases, and they have not decided as to what version they will be reporting out. However, they do expect to take some action during this 2d session of the 95th Congress.

These bills are indicative of the tendency to ease out Federal courts' heavy calendar. One of Judge Toledo's concerns, the adverse impact of a potential increase in the diversity cases pending in Puerto Rico's State courts, which might otherwise be filed in the District Court for Puerto Rico if Spanish is allowed, would be dispelled as a threat to his heavy calendar by the curtailment of this type of case as a result of congressional action.

On January 4, 1978, U.S. District Court Judge Juan R. Torreulla wrote a letter to Hon. Peter Rodino, chairman of the House Committee on the Judiciary, contending that sections 3 and 4 of H.R. 10228, if enacted, would create: (a) lack of uniformity in the Federal judicial system; (b) legal problems on its implementation; (c) effectively isolate the U.S. District Court for the District of Puerto Rico from other districts; and (d) raise serious constitutional and policy questions.

According to a study made by the Congressional Research Service at my request, which I made available to the chairman and the committee, they have been unable to find any precedent which would indicate that the provisions of sections 3 and 4 of H.R. 10228 have constitutional infirmities. However, CRS also concluded that enactment of such provisions will have various adverse effects such as those cited by the court in *United States* v. *Valentine*, 288 F. Supp. 957 (DCPR 1968). But if the subcommittee looks in detail to the alleged *Valentine* adverse impact effects, it has to conclude and agree that said effects are mere administrative inconveniences, and almost nonexistent when one faces a provision such as the one in this bill that merely requires, or allows, rather, optional use of Spanish at the discretion of the court.

Among other authorities quoted, Judge Torruella relies in *Valentine* to buttress his arguments in opposition to section 3 and 4. In *Valentine*, the court stated:

> The basic civil functions of Federal district court in offering an opportunity to nonresidents of resorting to a tribunal not subject to local influence (see *Balzav* v. *People of Puerto Rico*, supra, 258 U.S. at 312, 42 S. Ct. at 348) would be compromised and unreasonably restricted here, were litigants forced, in order to avail themselves of the facilities of this court, to litigate through interpreters in a language other than English.

Mr. Chairman, in this bill no one will be forced to litigate in Spanish unless the court in the interest of justice finds that Spanish should be utilized, and mainly these cases would be those in which all the parties are Spanish-speaking.

Mr. EDWARDS. Can all of the judges speak Spanish?

Mr. CORRADA. Oh, yes, all of the judges in Puerto Rico are Puerto Ricans, Judge Toledo, Judge Torruella, Judge Pesquera, they are native-born Puerto Ricans.

Mr. EDWARDS. But Judge Torruella is not a friend of the bill.

Mr. CORRADA. Well, he has in his mind some constitutional questions that he raised that we have dispelled through the study of CRS.

Mr. EDWARDS. He must think his own court runs pretty well.

Mr. CORRADA. I am sure he does, yes.

This will not happen, Mr. Chairman, with the enactment of sections 3 and 4 of H.R. 10228, nor do we have here an insurmountable legal problem. Section 3 of the bill provides that:

> Initial pleadings in the U.S. District Court for the District of Puerto Rico may be filed in either the Spanish or English language and all further pleadings and proceedings shall be in the English language, unless upon application of a party or upon its own option, the court, in the interest of justice, orders that the further pleadings or proceedings, or any part thereof, shall be conducted in the Spanish language.

The District Court for Puerto Rico will remain a tribunal not subject to local influence. The judges there will continue to be ap-

pointed for life by the President of the United States with the consent of the Senate.

Furthermore, the court will retain its authority and will have discretion to decide which cases should be conducted in English. Hence, the legal rights of nonresidents and non-Spanish-speaking persons would remain protected as they presently are. It is in the interest of justice and when all circumstances are met that this discretionary authority will be used.

The U.S. Department of Justice in a letter to Chairman Rodino, dated May 12, 1978, regarding sections 3 and 4, expressed support for their enactment, and I quote:

> The section of the bills concerning the District Court for the District of Puerto Rico enjoys the Department's strong support.
>
> In many actions, both civil and criminal, in the district of Puerto Rico everybody in the courtroom speaks Spanish, but many do not speak English. Yet under current law all the proceedings must be conducted in English. The bills provide that the judge may allow proceedings to be conducted in Spanish. This is expected to result in a substantial savings in the cost of interpreters for the district of Puerto Rico, and to increase the fairness of proceedings held in that court.

Some may raise the question of potential limitation on judges from other districts sitting by designation in the District Court for Puerto Rico when needed.

I do not believe this will be a serious problem. It will be the responsibility of the clerk of the court to place in the calendar of visiting judges those cases in which the English language will be used.

In its study, the CRS raises a question with respect to jury selections which I should discuss. The decision in *United States* v. *Ramos Colon*, 415 F. Supp. 459 (1976) indicates that:

> Of 4,262 questionnaires recently sent to prospective jurors in Puerto Rico, 3,522, or 83 percent, indicated that the persons involved were disqualified because of insufficient English proficiency. If this is representative of the entire population of otherwise eligible jurors in Puerto Rico, section 4, which would prohibit the disqualification for service as a juror of any person not proficient in English if he is proficient in Spanish, would doubtless have the effect of causing every jury to have perhaps a majority of jurors unable adequately to use English.

CRS also stated that:

> If this is true, every jury trial would have to be conducted in the Spanish language for otherwise the non-English-speaking jurors would be unable effectively and intelligently to perform their duties as jurors. See, for example, *Miranda* v. *United States*, 225 F. 2d 9, 16–17 (CA1). Thus, the permissive language of section 3 concerning pleadings and the conduct of trials in Spanish would appear currently to be inoperative.

This problem was discussed by the Senate Committee on the Judiciary by stating in the report on S. 1315 that:

> The bill does not address the manner by which the district court would develop a jury wheel for cases to be conducted in Spanish. At present, the jury wheel would, of course, include only persons who speak English; however, most of those who do speak English also speak Spanish and, therefore, would be eligible for cases conducted in Spanish as well. The responsibility for developing methods of juror selection is already statutorily assigned to each district court, 28 U.S. Code 1862.

Futhermore, the report also said:

> The District Court for Puerto Rico would be best qualified to develop a proper procedure for the selection of jurors for such cases, and the committee does not find it necessary to develop such procedures in this legislation.

The District Court for Puerto Rico should find a workable solution to this problem in accordance with its needs. The court, I am sure, has the experience and expertise to establish the mechanisms for an adequate and workable jury wheel.

To conclude, I fully support and urge you to support H.R. 10228 for the following reasons:

One: The administration of justice in any community should allow proceedings to be conducted in the language of that community, even in a court which forms part of a Federal system of a country where another language is the prevalent language, even more so, of course, when we are doing this optionally, and at the discretion of the court.

Two: Sections 3 and 4 of H.R. 10228 will improve due process and quality of justice to litigants in Puerto Rico.

Three: If Spanish were used, the trial time in cases would be reduced by the amount of time it takes for court interpreters to translate the proceedings from Spanish to English and English to Spanish.

Four: Allowing some proceedings to be conducted in Spanish will in no way jeopardize the rights of those parties who prefer to have the proceedings conducted in English.

Five: If Spanish were to be allowed, those attorneys who do not litigate in the Federal court because they do not feel their mastery in English is good enough to allow them to represent their clients adequately, would begin to protect their clients' interest in the most appropriate forum, whether State or Federal, a choice they don't have now.

Six: Once Spanish-speaking attorneys are allowed to plead in Spanish, and try their cases in Spanish, they will go to the Federal court in order to get the benefit of a jury trial in civil cases, which they do not get in the Puerto Rican State courts, and to claim the benefits of Federal rights more effectively.

In other words, Mr. Chairman, the constitutional and civil rights of citizens of the United States, who reside in Puerto Rico, would be better protected.

Seven: On the merits, the bill represents a positive step toward guaranteeing a better quality of justice to litigants in Puerto Rico.

Finally, I urge you to favorably recommend the enactment of this bill with the provisions pertaining to Puerto Rico. In the balance of convenience, justice has much more weight than the administrative problems suffered by those in charge of its administration.

Thank you.

Mr. EDWARDS. Well, thank you very much, Mr. Corrada, you have made a very strong case for the provisions pertaining to Puerto Rico. I would certainly agree with your statement that there are still tinges of colonialism in the system. It is disturbing that the people of Puerto Rico have to deal with a system such as that which you have described to us today.

Do we have an estimate on how much the bill would cost?

Mr. CORRADA. I have been informed that the $2 million estimate that has been furnished to the committee includes the cost insofar as it pertains to the application of sections 3 and 4 in Puerto Rico.

Mr. EDWARDS. I am also sure our staff will be in touch with members of your staff regarding more details. Do you have any questions, counsel?

Ms. GONZALES. Yes. The only question I have concerns the position of the Federal Bar on this issue. Could you tell us what their position is?

Mr. CORRADA. Previously the Federal Bar in Puerto Rico, the Federal Bar Association, which has a chapter in Puerto Rico, had stated a position on the mandatory use in all cases of Spanish in the Federal courts in Puerto Rico. I do not know that they have a position on this bill as it pertains to sections 3 and 4. In other words, their position has been traditionally in opposition to some attempts that were made in the last Congress in a bill [H.R. 11200], which was called a New Compact of Relationship of Puerto Rico with United States, which was not reported out of committee, which required the mandatory use of Spanish and English as an exception, which was the reverse situation from what we have here. To that they were opposed. I have no knowledge or information that they have any kind of a position on the optional use of Spanish in some cases as provided in this bill.

Ms. GONZALES. Thank you.

Mr. EDWARDS. Mr. Butler?

Mr. BUTLER. Thank you very much. I thank the witness for his testimony. I had a chance to peruse it before I came in, and I would not have any questions at this time except to say that I have a fair view of your understanding and view of this legislation. We appreciate your contribution, and we will certainly keep it in mind as we go along.

Mr. CORRADA. Mr. Chairman, if I may add one word, as you know, the Senate passed this bill, including the provisions for Puerto Rico. When this happened, expectations were raised there that finally after so many years there would be some degree of equity in allowing the optional use of Spanish in the courts. I would like to urge the chairman not to delay action on sections 3 and 4, in other words, not to separate the consideration of the Puerto Rican provisions from the rest of the bill, because in my mind—and given the fact that we are supposed to adjourn by October 7, because this is a year of congressional elections—in my mind if that happened, the chances or the opportunity of this legislation pertaining to Puerto Rico passing in the House this year are very, very limited.

Our great hope is that together with this entire bill, as it may be changed by the subcommittee, that this committee will consider the Puerto Rican situation, as did the Senate, and that the legislation will not be killed with respect to this Congress.

I know, obviously, we will have an opportunity, if that happens, of reintroducing it next year, but then we have to start all over again, and mind you, if Puerto Rico stands alone in his legislation, without the rest of the legislation, perhaps it might not be the kind of priority that we would like it to be.

Mr. EDWARDS. Thank you very much, Mr. Corrada. You have made a very persuasive argument. We listen to you with great respect and we will work on this legislation with diligence.

Mr. CORRADA. Thank you very much, Mr. Chairman.

Mr. EDWARDS. We will recess for 10 minutes.

[Short recess.]

Mr. EDWARDS. The subcommittee will come to order. We also have with us this morning the following witnesses from the Department of Justice: John Huerta, Deputy Assistant Attorney General, Civil

Rights Division; Paul Nejelski, Deputy Assistant Attorney General, Office for Improvements in the Administration of Justice; and from the Administrative Office of the U.S. Courts, our longtime friend, Carl H. Imlay.

Gentlemen, you have time restraints and we have time restraints. Mr. Butler and I and the staff have read your excellent statements. We would appreciate it very much, if in a few short succinct paragraphs, you could each explain what is the nature and thrust of the testimony. Who would like to go first?

[The prepared statement of Mr. Nejelski follows:]

STATEMENT OF PAUL NEJELSKI, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE FOR IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE OF THE DEPARTMENT OF JUSTICE

Mr. Chairman and members of the Subcommittee: Good morning. My name is Paul Nejelski. I am Deputy Assistant Attorney General in the Office for Improvements in the Administration of Justice of the Department of Justice. I am glad to appear before this Committee this morning to support enactment of H.R. 10228 and S. 1315, the proposed "Bilingual, Hearing, and Speech Impaired Interpreter Act".

This bill would establish a program in the Administrative Office of the United States Courts to regulate the provision of interpreters' services to persons who speak only a language other than English or who are hearing or speech impaired. The bill would also govern how and when such services would be provided. Finally, in the District of Puerto Rico, it would allow pleadings in some cases to be written and proceedings to be conducted in Spanish and would permit jurors who speak only Spanish to sit in proceedings conducted only in Spanish.

John Huerta, Deputy Assistant Attorney General of the Civil Rights Division, is presenting the views of the Department of Justice on the provisions relating to Puerto Rico since his office has worked on the development of that proposal. I will address the interpreters' services provisions of the bill with which our office has greater familarity. Although this presentation is divided between two offices, I wish to emphasize that the Department of Justice fully supports all provisions of the bill.

At present, the provision of interpreters' services is governed by the Federal Rules of Civil and Criminal Procedure. These rules give courts discretion to appoint interpreters in appropriate situations.

The bill makes three principal changes to present practices. First, the bill establishes standards for when the services of an interpreter must be provided in criminal and civil actions initiated by the United States. An interpreter would be required if a party speaks only a language other than English or suffers from a speech or hearing impairment which would inhibit comprehension of the proceedings or communication with counsel and the presiding judicial officer.

We support this portion of the bill. It is important that all parties to a court proceeding adequately comprehend the events that are transpiring in the courtroom and are able to adequately communicate with the officers of the court when necessary. We believe that the standards set forth in the bill comport with the maintenance of this minimum level of communication necessary for reasonable and fair courtroom proceedings to be conducted.

The bill also provides for the certification of interpreters in federal court by the Administrative Office of the United States Courts. This proposal is in response to complaints that interpreter services in federal courts are not consistently of sufficiently high caliber. These complaints are dealt with at present by reviewing the accuracy of the translation after the fact. We believe that certification of interpreters would largely obviate the need for such post-trial review. It would be a more effective and less costly method of assuring the necessary quality of interpretation in federal courts.

The provision of effective interpreters' services is vitally important if the courts are to fulfill their role of being available to resolve the disputes of all citizens. This bill would improve public access to the federal courts by insuring that well

qualified interpreters will always be available and will be called upon whenever there is a need for them.

The proposed legislation also recognizes the often overlooked need of hearing and speech impaired persons for interpreters' services. As with language interpretation, the bill insures that the courts will meet the standards for interpreters' services needed in order that parties with speech or hearing impairments can fully and fairly receive their day in court.

The third change brought about by the bill is the provision of interpreters, services at the expense of the court for nonindigent criminal defendants and for defendants in civil actions initiated by the United States. Discretion, however, is reserved in the court to tax civil defendants the costs of interpretation in actions initiated by the United States as part of the costs of the action.

Currently, interpreter's services are required to be provided by the court for indigent criminal defendants. *Negron v. New York*, 434 F.2d 386 (2d Cir., 1970). Increasing credence is being accorded the view that the role played by the interpreter is so basic a part of a court proceeding that it should be a component of the services offered to litigants as a cost of the maintenance of the court system, rather than being a cost of litigation borne by the parties. The bill follows this precept except in the case of civil actions not initiated by the government, where the cost of interpreters' services would continue to be paid by the parties in such proportion and at such time as the presiding judicial officer directs. We expect that the practical result of the foregoing would be that losing parties in most private civil litigation will continue to pay for the costs of an interpreter, except where the appointment is exclusively for the benefit of the court.

The Department supports the provision of interpreters' services for all criminal defendants because it is so fundamental a part of the court process in a case in which the defendant does not speak or understand English. We adhere to the precept that criminal defendants must have a full and fair opportunity to defend themselves against the charges that they face.

In the civil arena, we believe that more caution must be exercised than in criminal cases in expending tax dollars in order to provide services for private litigants. We support the approach of the bill which insures that interpreters' services be of high quality, but provides that civil parties are to pay for interpreters as costs of litigation. The only exception would be for parties brought into civil litigation by the government, who would not have to bear the costs of interpreters' services if the court determined, in its discretion, that the government should bear those costs.

We believe that the foregoing provisions would fairly allot the costs of interpreters' services between the public treasury and those citizens who make use of our courts. At the same time, the program established by the bill would insure that when interpreters are used that they are of the high quality befitting the federal courts.

For these reasons the Department of Justice supports enactment of section 2 of this legislation. The Department of Justice defers to the Judicial Conference of the United States as to whether sections 5–12 should be enacted.

Mr. Chairman, this concludes my prepared statement. I would be glad to respond to any questions you or the members of the Subcommittee may have.

TESTIMONY OF PAUL NEJELSKI, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE FOR IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY JOHN M. BEAL, ATTORNEY

Mr. NEJELSKI. Mr. Chairman, I am Paul Nejelski of the Office for Improvements in the Administration of Justice. I would be happy to summarize my testimony rather than read it.

Mr. EDWARDS. Without objection, all of the testimony will be made a part of the record.

Mr. NEJELSKI. I would note that despite two representatives from the Department of Justice, the Department endorses the whole bill.

I will be talking about primarily section 2, because our Office has the most familiarity with that. Mr. Huerta and the Civil Rights Division have been most involved in sections 3 and 4 on Puerto Rico.

As the Senate report on this bill notes, this is more of an evolutionary than a revolutionary bill in terms of section 2. Many of the procedures are now in practice in the courts, and there are many good decisions being made as a result of the discretion given to the judges.

But we are now at a time in our history in the development of the judiciary that there is no room for marignal or questionable cases. We put great faith in the interpreters in our courts. Any of us who have been in court as counsel or as spectators have seen people whose first language is not English. They have to use an interpreter, and after they go through a long description in their native language, the interpreter gives a very short summary translation. One wonders how much interpretation is going on or how much perhaps even testimony by the interpreter may be taking place.

The judiciary has grown greatly in size and complexity. If the omnibus judgeship bill is enacted, as we all hope it will be, over 100 trial judges will be added to the judiciary. We feel it is time to come forward with standards, with a statute, governing interpretation, not leaving it to the discretion of the judges.

There is a need to professionalize the interpretation in the Federal courts. This is now a matter of discretion. There is no central standard, no control by the Administrative Office, or anyone else.

I am not suggesting there is anything illegal happening, but there may be a tendency, I think, to accept someone who is familiar to the court, whose credentials and whose actual interpretation may be quite imperfect.

If I may speak from personal experience, before rejoining the Department of Justice last year, I was the deputy court administrator of the State of Connecticut. We put in, about 3 years ago, a program for certification of interpreters, particularly Spanish-speaking. There are many Puerto Ricans and others whose primary language is Spanish there. We had six interpreters who were hired on more or less a full-time basis. Much to our surprise, one of the six completely failed the written test that was given, and received the grade of below 50 on both the initial test and the retest that he asked for.

There is no way of knowing what the competence of these people is unless it is tested. And a very imperfect way of testing it, is a challenge after the fact through litigation, and attack of a conviction in a criminal case or the judgment in a civil case.

To the extent that this statute provides for appointment by the court from a panel, from a neutral source, I think it should be strongly supported.

If I may once again draw on personal experience, I was an assistant U.S. attorney in the district of New Jersey a number of years ago. At that time, I litigated an expatriation case, which involved very important rights of whether the person involved had, by joining the Italian Navy in 1954, has his American citizenship. We put on, from the Government, an expert witness in Italian law to explain the selective service and other Italian laws.

When it came time for the defendant to testify, he had no interpreter. He couldn't afford an interpreter, and he used our expert

witness to help as a favor to the court. That kind of partiality, whether seeming or real, should be discouraged. Neutral interpreters should be encouraged.

This bill, as you know, provides for standards for the first time for use of interpreters. There can be too little use of interpreters. There could also, I think, be too much use. Simultaneous translation, for example, may not be needed and can be very costly.

The bill provides for certification of interpreters, which I think is greatly needed, considering the size of this country and the number of judges, the number of interpreters in use, and who will be in use in the future. The rights of the hearing and speech impaired are recognized for the first time. And the Government is called upon to assume a greater financial burden, as I think it should, where it initiates a criminal or a civil case.

I would note that the previous administration did not support this legislation, and didn't see the need for it. This administration does see the need for it; there is no room for doubts about second-class citizenship or inferior justice for the many many non-English-speaking citizens and residents in this country. It is an important part of the administration's access to justice package, and we urge its passage.

Thank you very much, Mr. Chairman.

Mr. EDWARDS. Thank you very much. I wonder if we might identify everybody at the table.

Mr. NEJELSKI. This is Mr. John M. Beal on my right, who is a staff attorney in our office, who worked on the development of the bill.

Mr. IMLAY. Mr. Stafford Ritchie, my Special Assistant General Counsel for Administration.

Mr. EDWARDS. Thank you.

[The prepared statement of Mr. Huerta follows:]

STATEMENT OF JOHN HUERTA, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE

Mr. Chairman and members of the Subcommittee: I appreciate this opportunity to testify before you, on behalf of the Department of Justice, in support of those portions of H.R. 10228 and S. 1315 which would permit the use of Spanish in the United States District Court for the District of Puerto Rico. As you may know, United States Attorney Julio Morales Sanchez, who has been U.S. Attorney in Puerto Rico since 1970, is scheduled to testify before you on August 9, and will also support these provisions. He will be able to provide his views on this proposal from the perspective of one who, for 8 years, has had responsibility for more cases in that Court—both civil and criminal—than anyone else. My brief comments today are addressed to more general considerations that I think the Subcommittee should bear in mind as you consider this legislation.

The Department of Justice first testified in favor of a provision permitting—but not mandating—the use of Spanish in that Court in 1974 (see testimony of Assistant Attorney General Pottinger before the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, United States Senate, reprinted in Hearings on S. 1724, 93rd Congress, Second Session at pp. 112–124). Now, as then, we support those portions of H.R. 10228 and S. 1315 which would permit Spanish to be used in judicial proceedings in the federal court in Puerto Rico.

While the reasons suggesting consideration of a change from the current law which requires the use of English in this court may be obvious, I think it important to review briefly certain facts concerning the languages spoken in Puerto Rico as a necessary predicate for your consideration of these provisions.

In Puerto Rico there is a language situation converse to that of the United States. Although in the United States almost all persons speak English, 1970 Census statistics reveal that 57.3 percent of all Puerto Ricans over the age of 10 years old do not speak English. The 1970 Census also shows that 59.2 percent

of the women and 75.2 percent of those over 60 speak no English.[1] The Census Bureau explains that "(p)ersons were classified as able to speak English if they reported that they could make themselves understood in English." [2] Thus, these statistics probably understate the percentage of persons unable to comprehend, without the aid of an interpreter, the language of something as complex as a judicial proceeding. In addition, they undoubtedly understate the percentage defendants in federal criminal proceedings who are unable to comprehend the proceedings without the aid of an interpreter.

Although Spanish is the primary language of most Puerto Ricans and the only language spoken by the majority, the law currently provides that all pleadings and proceedings in the district court shall be conducted in English (48 U.S.C. 864 (1976)). As a necessary concomitant to this provision, another statute, 28 U.S.C. 1865(b) (2) and (3) (1976), effectively limits participation on federal juries to those Puerto Ricans, usually of a higher educational and occupational level than the average Puerto Rican, capable of speaking and understanding English. The result of these statutes is to foreclose—for a large number of Puerto Rican litigants who are also United States citizens—the ability to comprehend fully judicial proceedings to which they may be parties and, especially in criminal proceedings, the right to a trial by a jury of their peers. In our view this is neither the most effective nor the most appropriate way to operate the United States District Court for the District of Puerto Rico.

The district court presently provides interpreters to translate questions addressed to and answered by Spanish-speaking witnesses, and it also provides oral simultaneous translation to criminal defendants. Though these practices help remedy the problem inherent in a situation where such a large number of persons do not speak the language of the court, they do not provide to many Puerto Ricans a tribunal where they can readily and comfortably understand what is going on. Further, such a substantial amount of translation results in unnecessarily drawn out proceedings.

To remedy this problem, we favor the provisions of H.R. 10228 and S. 1315 which would make it possible for the district court to conduct proceedings in Spanish and would open up petit jury service to non-English speaking Puerto Ricans now barred from such service. Under these provisions, most Puerto Ricans will be better able to make effective use of this court in both civil and criminal proceedings. In addition, these changes would permit a substantial and important group of persons to serve on federal petit juries in Puerto Rico.

The proposal should improve judicial efficiency; by eliminating the time necessary to conduct translations, proceedings will move more quickly. As importantly, this legislation will do much to effectuate the guarantees of equality of all persons before a federal court and to insure that all persons before the court understand the court proceedings. Indeed, fairness suggests that we take all reasonable steps to insure that litigants readily understand judicial proceedings in which they are involved.

The Congress has twice in the last 13 years recognized the importance of our citizens not having their right to vote infringed because of certain language difficulties. While these analogies from the franchise are obviously not controlling here, they are evidence of a consistent Congressional concern for those barred from important areas by language problems.

First, in 1965, Congress provided in section 4(e) of the Voting Rights Act (codified in 42 U.S.C. 1973b(e)) a guarantee that a person with a sixth grade education from an American-flag school in which the predominant classroom language was other than English could not be denied the right to vote on the ground he was not literate in English.[3]

Second, in the 1975 Amendments to the Voting Rights Act, "Congress extended the Act's strong protections to cover language minorities". *Briscoe* v. *Bell*, 432 U.S. 404, 405 (1977). Without going into detail on this aspect of them, the amendments provide that state and local governments, in those places where there are substantial numbers of language minorities, must provide both registration and balloting materials in the foreign language used by these people.

These two sections manifest Congressional determination that the right to vote is too basic to justify language infringements on that right.

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[1] U.S. Bureau of the Census, Census of Population: 1970, Detailed Characteristics, Final Report PC(1)–D53 Puerto Rico 53–624 (1973).

[2] The Bureau notes, though, that "persons who could speak only a few words, such as 'Hello' and 'Goodbye', were classified as unable to speak English." *Id.*, Appendix B at App. 8.

[3] The details of this provision and the upholding of its constitutionality may be found in the Supreme Court's decision in *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966).

Analogously, in its 1974 decision in *Lau* v. *Nichols*, 414 U.S. 563, the Supreme Court held that the failure of a school system to teach English to San Francisco school children who speak only Chinese had effectively foreclosed those children from any meaningful education. In that case all students had been provided with the same facilities, textbooks, teachers, and curriculum. However, because the Chinese students could not comprehend the language of their teachers, textbooks, or fellow students, they were unable to use any of these material benefits. The Court found that equal educational opportunity in fact requires more than just equal access to the material components of an educational program; it requires a basic ability to communicate in and comprehend the language of instruction. thus, *Lau* presented the situation in which apparent equality was actually a denial of equal educational opportunity for a non-English speaking minority.

The rationale of the Court in *Lau* may be equally applicable here. Equality before the courts means more than the mere providing of all parties with the same tangible protections and guarantees. In the view of this Administration, permitting the use of Spanish in the federal court in Puerto Rico would be an appropriate means of furthering the objective of equality.

We would, however, suggest one amendment to this proposal. We believe that section 4(a) of the bills should be amended to read as follows:

> Sec. 4. (a) Section 1865 of title 28, United States Code, is amended by adding the following new subsection at the end thereof:
>
> "(c) If the United States District Court for the District of Puerto Rico orders that a trial be conducted in the Spanish language pursuant to section 42 of the Puerto Rico Federal Relations Act, as amended (48 U.S.C. 864), each juror shall be able to speak, read, write, and understand the Spanish language with a degree of proficiency sufficient to fill out satisfactorily a Spanish-language juror qualification form, but need not meet the requirements of subsections (b)(2) and (b)(3).".

This change more clearly states the intention of the section that jurors in trials conducted in Spanish understand that language and need not be proficient in English. In addition, the amendment would retain the requirement of existing law of comprehension of English for grand jury service, a requirement the Department believes to be important because many witnesses, particularly from investigative agencies, are fluent primarily or solely in English. Since a grand jury considers many different cases, it is not practical to assign jurors only in cases in which there are only Spanish-speaking witnesses.

There are, obviously, practical problems to be considered with respect to this legislation and we understand these will be explored at subsequent hearings in early August. Both United States Attorney Morales Sanchez and I look forward to being with you then.

Mr. Chairman, that concludes my prepared statement. I would be happy to receive any questions you or members of the Subcommittee may have.

TESTIMONY OF JOHN HUERTA, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

Mr. HUERTA. I am John Huerta, Deputy Assistant Attorney General, Civil Rights Division.

Mr. Chairman and members of the subcommittee, I would like to present a summary of my prepared testimony. I appreciate the opportunity to testify before you in reference to sections 3 and 4 of H.R. 10228 and S. 1315. I would like to direct my comments to Puerto Rico.

We believe that Puerto Rico happens to be a very unique situation. The 1970 census statistics indicate that 57.3 percent of all Puerto Ricans over the age of 10 years of age do not speak English. The 1970 census also shows that 59.2 percent of the women and 75.2 percent of those over 60 speak no English.

The Census Bureau explains that:

> Persons were classified as able to speak English if they reported that they could make themselves understood in English. Thus, these statistics probably understate the percentage of persons unable to comprehend, without the aid of

an interpreter, the language of something as complex as a judicial proceeding. In addition, they undoubtedly understate the percentage of defendants in Federal criminal proceedings who are able to comprehend the proceedings without the aid of an interpreter.

I might note that in the Senate report on S. 1315, it indicates that 75 percent of the defendants in criminal proceedings in the Federal district courts in Puerto Rico are solely Spanish-speaking.

Although Spanish is the primary language of most Puerto Ricans, and the only language spoken by the majority, the law currently provides that all pleadings and proceedings in the district court shall be conducted in English. The district court presently provides interpreters to translate questions addressed to and answered by Spanish-speaking witnesses, and it also provides oral simultaneous translations to criminal defendants.

Mr. EDWARDS. Are proceedings in State courts conducted in Spanish?

Mr. HUERTA. Yes, all of the State courts are.

Mr. EDWARDS. Is this by State statute or under the Constitution?

Mr. HUERTA. I don't know whether it is by statute or Constitution, but their proceedings are all in Spanish.

This gentleman here is a former assistant U.S. attorney, and a native Puerto Rican. Perhaps he can answer that.

Mr. EDWARDS. Yes, go ahead.

Mr. CASTELLANOS. The procedures—I am Tony Castellanos. The procedures are in Spanish in the State courts. But they are also allowed to be conducted in English if that is in the interest of justice.

Mr. EDWARDS. Are all of the court personnel, including the judges, bilingual?

Mr. CASTELLANOS. I would say most of them are bilingual. But I cannot answer that categorically. There is no constitutional or legal mandate to conduct the proceedings in Spanish, or in English.

Mr. EDWARDS. Thank you.

Mr. HUERTA. This practice of providing simultaneous translation, although it helps to remedy the problem inherent in a situation where such a large number of persons do not speak the language of the court, it does not provide to many Puerto Ricans a tribunal where they can readily and comfortably understand what is going on.

Further, such a substantial amount of translation results in unnecessarily drawn out proceedings.

This proposal, H.R. 10228, should improve judicial efficiency by eliminating the time necessary to conduct translations; proceedings will move more quickly.

This legislation will do much to effectuate the guarantees of equality of all persons before the Federal court, and to insure all persons before the court understand the court proceedings.

Indeed, fairness suggests we take all reasonable steps to assure that litigants readily understand judicial proceedings in which they are involved.

The Department would, however, suggest one amendment to this proposal. We believe that section 4(a) of the bill should be amended to read as follows:

SEC. 4. (a) Section 1865 of title 28, United States Code, is amended by adding the following new subsection at the end thereof:

(c) If the United States District Court for the District of Puerto Rico orders that a trial be conducted in the Spanish language pursuant to section 42 of the

Puerto Rico Federal Relations Act, as amended (48 U.S. Code 864), each juror shall be able to speak, read, write, and understand the Spanish language with a degree of proficiency sufficient to fill out satisfactorily a Spanish-language juror qualification form, but need not meet the requirements of subsections (b)(2) and (b)(3).

This change more clearly states the intention of the section that jurors in trials conducted in Spanish understand that language and need not be proficient in English.

In addition, the amendment would retain the requirement of existing law of comprehension of English for grand jury service, a requirement the Department believes to be important because many witnesses, particularly from investigative agencies, are fluent primarily or solely in English. Since a grand jury considers many different cases, it is not practical to assign jurors only in cases in which there are only Spanish-speaking witnesses.

There are, obviously, practical problems to be considered with respect to this legislation, and we understand these will be explored at subsequent hearings in early August. U.S. Attorney Morales Sanchez will be available to you in August to answer your questions in this regard.

Mr. Chairman, this concludes my statement. I will be happy to receive any questions from you or other members of the subcommittee.

Mr. EDWARDS. Thank you very much, Mr. Huerta. Mr. Imlay?

[The prepared statement of Mr. Imlay follows:]

PREPARED STATEMENT OF CARL H. IMLAY, GENERAL COUNSEL, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. Chairman, Members of the Subcommittee, Ladies and Gentlemen: I am Carl H. Imlay, General Counsel of the Administrative Office of the United States Courts. The Director of the Administrative Office has asked me to express to you his appreciation for your invitation to appear before you today. I testify today in his behalf to express our observations and views concerning that legislation now pending before you which would provide for the more effective utilization of interpreters in courts of the United States.

Congress has considered legislation generically described as providig for bilingual court proceedings in several recent sessions. That proposed legislation has been concerned with what I believe can be identified as two distinct areas of interest: (1) The general problems which many district courts confront from time to time when a non-English speaking person appears as a defendant in a criminal prosecution or a party in a civil action, and (2) The special and unique problems of the United States District Court for the District of Puerto Rico. Inasmuch as other witnesses will address the special problems of the district court in Puerto Rico, I will restrict myself to comments on the general subject of the use of interpreters in federal courts. The bills which you have before you now address both topics. H.R. 10228, 95th Cong., 1st Sess. (1978); S. 1315, 95th Cong., 1st Sess. (1978). Section 2 and sections 5 through 10 concern the general use of interpreters in federal courts.

The Judicial Conference of the United States has had the opportunity to consider these legislative initiatives. While the Conference recognizes that the provision of interpretive services for non-English speaking parties and litigants is of high importance, the Conference expressed the belief that the mechanisms already in place deliver those services adequately to all persons who have a right to an interpreter at government expense. See [1974] Reports of the Proceedings of the Judicial Conference of the United States 5–6. See also [1977] Reports of the Proceedings of the Judicial Conference of the United States 50–51.

To facilitate your consideration of these bills in the context of current law, I will develop briefly that "right" which now exists in federal courts to interpretive services at government expense, and I will explain the mechanism within the judicial branch to ensure that that right is protected.

Case law which develops the subject of a "right" to an interpreter is exceedingly sparse. It seems clear, however, that there exists no absolute right to an interpreter at government expense for a non-English speaking defendant in a criminal pros-

ecution. When a criminal defendant argued that he enjoyed such an absolute right, the United States Court of Appeals for the Second Circuit responded in the following terms:

> We are aware that trying a defendant in a language he does not understand has a Kafka-like quality, but (the defendant's) ability to remedy that situation dissipates substantially—perhaps completely—any feeling of unease. In other words, if (the defendant) denied himself the interpreter and stands on his right to do so, does not the issue become solely who should have paid for one? Moreover, we doubt that (the defendant's) claimed absolute constitutional right to an interpreter is stronger than the absolute right to a court-appointed counsel; the latter is held only by the indigent, *Gideon* v. *Wainwright*, 372 U.S. 335, 339–340 (1963). . . . From (the defendant's) point of view, we think the most persuasive approach is the point made at oral argument that if the Government chooses to prosecute someone, the burden rests upon it to furnish the basic apparatus for intelligible and minimally comfortable proceedings, e.g., the physical accoutrements of a trial, such as a stenographer or even the courtroom itself, neither of which is billed to the defendant.

United States v. *DeSist*, 384 F.2d 889, 902–903 (2d Cir. 1967), *aff'd*, 394 U.S. 244 (1969).

Defendant Nebbia in *DeSist* had contended that he was denied due process, a fair trial, and the rights of confrontation, presence at his trial, and effective assistance of counsel as a consequence of the trial judge's refusal to provide him with a court-appointed interpreter at government expense to translate the proceedings in their entirety. *DeSist*, 384 F.2d at 901.

The court declined to hold that the defendant had an absolute right to a court-appointed interpreter at government expense. The court discussed the fact that defendant Nebbia's request for a court-appointed interpreter was specifically not based on indigency. Indeed, he had posted $100,000 "within a few hours at an earlier stage of the proceeding." *DeSist*, 384 F.2d at 901. Furthermore, defendant's counsel had partners who spoke defendant's language, and the court concluded that the defendant had been able to communicate with his counsel even in the absence of a court-appointed interpreter.

The Second Circuit again had an opportunity to consider the question of a constitutional right to an interpreter—this time in the context of a state prisoner's petition for a writ of habeas corpus. The prisoner had petitioned the United States District Court for the Eastern District of New York for the writ. *United States ex rel. Negron* v. *New York*, 310 F. Supp. 1304, 1307 (E.D.N.Y. 1970). At his murder trial in state court, the prisoner—indigent and proceeding with appointed counsel—neither spoke nor understood English. The district court reached the following conclusion:

> After consideration of the record below and the testimony at the *habeas corpus* hearing, the court concludes that [the defendant] was denied his Sixth Amendment right to confrontation and that, regardless of the probabilities of his guilt, his trial lacked the basic and fundamental fairness required by the due process clause of the Fourteenth Amendment. Under our system of justice, a procedure which offends the constitutional guarantees of the accused to a fair trial cannot be tolerated.

Negron, 310 F. Supp. at 1309.

The court of appeals agreed, concluding that the defendant could have heard no more that a "babble of voices." *United States ex rel. Negron* v. *New York*, 434 F.2d 386, 388 (2d Cir. 1970). The court's reasoning is instructive

> It is axiomatic that the Sixth Amendment's guarantee of a right to be confronted with adverse witnesses . . . includes the right to cross-examine those witnesses as an "essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal. . . . But the right that was denied [this defendant] seems to us even more consequential than the right of confrontation. Considerations of fairness, the integrity of the fact-finding process, and the potency of our adversary system of justice forbid that the state should prosecute a defendant who is not present at his own trial . . . unless by his conduct he waives that right. . . . And it is equally imperative that every criminal defendant—if the right to be present is to have meaning—possess "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding." . . . Otherwise, "[t]he adjudication loses its character as reasoned interaction . . . and becomes an invective against an insensible object."

Negron, 434 F. 2d, at 389 (citations omitted). Accordingly, the Second Circuit felt compelled to require that "a court, put on notice of a defendant's severe language difficulty, make unmistakably clear to [a defendant] that he has a right to have a competent translator assist him, at state expense if need by, throughout his trial." *Negron*, 434 F.2d at 391 (citation omitted).

Although the Second Circuit articulated this right in the context of state proceedings, the court's rationale necessarily extends the right to federal courts also. The right flows from the Sixth Amendment's guarantee of the assistance of counsel and of confrontation of witnesses against him, and from his right to be present at his trial.

The right the Second Circuit articulated flowed from the Sixth Amendment's guarantees of the assistance of counsel and of confrontation of witnesses against a defendant, and from the defendant's right to be present at his trial. Thus, inasmuch as the Sixth Amendment provided the foundation for the holding in *Negron*, the right to an interpreter, "at state expense if need be," extends not only to state judicial proceedings, but also to federal courts as well. As in the case of the Sixth Amendment right to counsel, however, the right to an interpreter at government expense extends only to indigents under current case law.

Since 1964, the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A (1976) (the Act), has provided the authority and the mechanism for the furnishment of representation at government expense to defendants in criminal proseeutions which the United States initiates in district courts. Congress provided in the Act that a court shall appoint counsel at government expense for any person charged with a felony or a misdemeanor (other than a petty offense) who is "financially unable to obtain adequate representation." 18 U.S.C. § 3006A(b) (1976). The representation which the government must furnish under the Act includes investigative, expert, or other services necessary for an adequate defense when the defendant is financially unable to obtain them. 18 U.S.C. § 3006A(e) (1976).

A non-English speaking defendant, a defendant with a hearing impairment, or a defendant with a speech impairment clearly requires interpretive services if if his Sixth Amendment rights are to be preserved inviolate. *See DeSist*, *Negron*. They are necessary for an adequate defense. I am confident that any judge in our federal district courts, when presented with a defendant who requires an interpreter, will authorize interpretive services under subsection (e), if the defendant qualifies under the Act. Subsection (e) is broad enough to comprehend interpretive services for a non-English speaking defendant, for a defendant with a hearing impairment, and for a defendant with a speech impairment.

Qualification under the Act involves analysis not only of the type of action and the type of offense involved, but also the financial means of the person. As indicated earlier, the Act reaches all criminal prosecutions involving felonies and misdemeanors (except petty offenses). On the subject of finances, the test is one of "financial inability," *not* indigency. 18 U.S.C. §§ 3006A (a), (b), (e) (1976). *United States* v. *Kelly*, 467 F. 2d 262, 266 (7th Cir. 1972), cert. denied, 411 U.S. 933, rehearing denied, 412 U.S. 923 (1973).

The Act reaches at least every defendant who enjoys a constitutional right to appointed counsel, or to an appointed interpreter, at government expense on account of his indigency. To the extent that it goes further and provides for representation at government expense for a person who is "financially unable to obtain adequate representation," but who is not indigent, the Act creates merely a statutory right, as distinguished from providing the mechanism for the protection of a constitutional right. In the context of the provision of interpretive services, Congress' purpose can be viewed, in the language of the Second Circuit in *DeSist*, as a determination that the government should "furnish the basic apparatus for intelligible and minimally comfortable proceedings." *DeSist*, 384 F. 2d at 902.

Given this history, we have considered the expense of an interpreter to be an expense of litigation to be borne by the party requiring that service. The government pays that expense of litigation under the Act for a criminal defendant who is financially unable to obtain that necessary service. The Act essentially defines the bounds of the authority of the judicial branch to pay for interpretive services for a party or a criminal defendant.

The established rule is that the expenditure of public funds is proper only when authorized by Congress. *Reeside* v. *Walker*, 11 How. 272, 291 (1851); *United States* v. *MacCollom*, 426 317, 321 (1976) (judgment by Rehnquist, J.). Where Congress has addressed a subject, such as government payment of expenses of litigation for private parties, and authorized expenditures where a condition is met, the clear

implication is that where the condition is not met, the expenditure is not authorized. *Botany Mills* v. *United States*, 278 U.S. 282, 289 (1929); *Passenger Corp.* v. *Passengers Assn.*, 414 U.S. 453, 458 (1974); *MacCollom*, 426 U.S. at 321 (judgment by Rehnquist, J.).

Accordingly, we at the Administrative Office are concerned with how to deal with the expenses of interpretive services in those situations for which there is no clear congressional guidance.

It is simple for me to state that the expense of an interpreter is an expense of litigation to be borne by a party. In practical application, however, strict adherence to that principle would delay and could even frustrate some criminal proceedings. For example, at a preliminary hearing, which a magistrate or a judge may conduct before a criminal defendant has retained counsel, the court hears only a "babble of voices" when a non-English speaking defendant talks. Thus, the interpreter provides services which benefit the court and the defendant mutually. The court must arrange for an interpreter before it can even ascertain whether a defendant will qualify for representation under the Criminal Justice Act.

Further, there is no express provision for the furnishment of interpretive services to a defendant charged with a minor offense, even if the defendant is indigent or only financially unable to obtain that service. While there may be no constitutional right to counsel at government expense in all minor offense prosecutions, *see Argersinger v. Hamlin*, 407 U.S. 25 (1972), it is hard to conceive of a situation in which a non-English speaking indigent criminal defendant would not be entitled to an interpreter at government expense, even if the offense charged is only a minor offense. Assuming the existence of such a constitutional right to an interpreter at government expense in a minor offense prosecution, there exists no statutory scheme to make government funds available to protect that right.

It can be argued that rule 28 of the Federal Rules of Criminal Procedure provides that mechanism. Rule 28 provides as follows:

> The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid *out of funds provided by law* or by the government, as the court may direct.

Fed. R. Crim. P. 28 (emphasis added).

Rule 28, of course, is only a rule of procedure. 18 U.S.C. §3771 (1976). Its provisions could not extend the availability of appropriated funds to cover an expense not contemplated by Congress. The integral language of the rule appears to recognize that fact if that payment is to be made from funds "provided by law." And Congress has spoken only through the Criminal Justice Act to make appropriated funds available for expenses of litigation.

Furthermore, even if Rule 28 provided a complete mechanism, the Department of Justice has articulated the position that Rule 28 reaches only indigents. *De-Sist*, 384 F.2d at 903.

Those courts in districts where substantial numbers of non-English speaking persons reside require the day-to-day services of interpreters just to operate their administrative services. Accordingly, the district courts now have approximately twelve (12) employees classified as interpreters scattered throughout the United States. These employees work not only in the offices of clerks of court, but they also provide valuable services as official court reporters in court. There is no problem concerning their provision of interpretive services to defendants who qualify for representation under the Act. However, there is some lingering doubt concerning the propriety of the provision of interpretive services to defendants who do not qualify for representation under the Act.

One of the effects of the legislation you have under consideration would be to resolve these lingering questions "on the fringes" concerning the provision of interpreters. The Senate's judgment in S. 1315 is that the government should assume the financial responsibility to provide interpretive services in all criminal prosecutions and in all civil actions initiated by the United States. In these classes of cases, the government would assume the burden to furnish interpretive services as part of the basic judicial apparatus for intelligible and minimally comfortable proceedings. The government would assume plenary responsibility in criminal prosecutions regardless of the financial status of the defendant. In civil prosecutions initiated by the United States, the government again would assume initial responsibility to arrange for interpretive services. However, the court would have the power in such civil cases, in its discretion, to apportion the expenses between or among the parties or to tax the expenses as costs against the losing party.

S. 1315 would have no effect on purely private civil actions or civil actions in which the United States is a defendant. In these classes of cases, the parties would remain exclusively responsible for the provision of interpretive services.

S. 1315 also would clarify the financial responsibilities of the Department of Justice and the Administrative Office. The Department would remain responsible for the expenses of interpreters required for government witnesses, and the Administrative Office would be responsible for expenses of interpreters in all other situations.

S. 1315 would establish uniform procedures applicable in all criminal prosecutions. The benefit of uniformity should contribute to the more efficient functioning of the judicial branch.

In addition, the Director of the Administrative Office would be required to establish a program to certify and qualify interpreters to serve in district courts. There is no evidence to support the conclusion that any interpretive services in district courts are less than adequate. As distinguished from the performance of counsel, however, the performance of an interpreter is not subject to the same public scrutiny. The only person who knows the accuracy of the interpreter's translation is the interpreter. To ensure that there is no hidden problem, S. 1315 would require that a court utilize only the services of a certified interpreter, unless a certified interpreter is not reasonably available.

Another benefit of this proposed legislation would be the establishment of a program to provide "special interpretation services." We believe that this authority could help to conserve judicial resources—and the resources of United States Attorneys—by expediting multi-defendant criminal prosecutions through the provision of simultaneous interpretation.

A non-English speaking defendant always requires an interpreter at counsel table to permit communication between the defendant and his counsel. When there is only one defendant, the interpreter also can interpret all the court proceedings for the defendant. The type of interpretation provided—summary, consecutive, or simultaneous—would depend on the circumstances. H.R. 10228 would establish consecutive as the standard. In fact, however, an interpreter may be able to provide simultaneous interpretation for his client. As the proceedings progress, the interpreter may be able to whisper verbatim interpretations to the defendant almost concurrently with their utterance by the speaker.

In multi-defendant prosecution, however, the collective whispering can rise to the level of a substantial din. If the proceedings have to pause to permit consecutive interpretation—that is, a complete delivery by the speaker and a second complete delivery by the interpreter in the other language—the length of the trial grows dramatically.

Because of the necessity of an interpreter at counsel table, those appointments under the Act are essential. However, if a court also can provide pure simultaneous interpretation, every defendant can receive a simultaneous translation through headphones. The time for the trial is reduced, or in fact, it may be possible to reduce the number of interpreters at counsel table.

This legislation would provide the Director with authority to furnish these special services to conserve judicial resources in addition to and distinct from the services provided under the Act. Again, the proposed legislation would invest the court with the power, in its discretion, to apportion the expenses between or among the parties or to tax them as costs.

Sections 5 through 10 of the bills provide necessary changes in the current authorities of the Director to provide for the implementation of this program, and to permit taxation of the costs of interpreters in civil actions. Section 7 would authorize the Director to appoint interpreters to serve in courts as needed throughout the country. Currently, a separate appointment would be necessary in each district to permit an interpreter to serve them. To the extent that the Director can establish an economical centralized system to provide interpretive services, this section would authorize him to make appointments. He would be authorized to appoint these individuals without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and the General Schedule. The authority would enable the Director to maintain a unified personnel system for interpreters, since interpreters the courts appoint are not subject to these laws. To accomplish this result, section 7 would amend section 602 of title 28, United States Code. The amended section 602 would continue the applicability of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, to all other employees of the Administrative Office. The section would conform section 602 with the various provisions of title 5, United

States Code, as a result of the 1966 redocification of that title. As a consequence of the recodification, the reference in section 602 to the "civil service laws" is ambiguous, and the recodified provisions themselves define their applicability to the judicial branch. Section 7 would also invest the Director with express authority to delegate his functions, powers, duties and authority to implement and to administer this program on a local level when efficiency and economy so dictate.

Thank you for the opportunity to appear before you today. I stand ready to respond to any questions the Chairman or the Members may have.

TESTIMONY OF CARL H. IMLAY, GENERAL COUNSEL, ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ACCOMPANIED BY STAFFORD D. RITCHIE, SPECIAL ASSISTANT GENERAL COUNSEL

Mr. IMLAY. Mr. Chairman and members of the committee, we have a prepared statement which we introduce in accordance with the chairman's previously stated permission to do so. We think that this proposed legislation as it relates to interpreters is needed in order to clarify existing law and to insure that where needed there will be a qualified interpreter available in every criminal case, and in every civil case where the Government is plaintiff.

I might point out, to clarify one confusion, hopefully, that this bill would only relate as it stands to criminal cases, and to civil cases where the Government is the plaintiff. I believe there was some discussion about bankruptcy proceedings previously, and that is why I mentioned our understanding in this respect.

Mr. BUTLER. Excuse me. Are you also addressing yourself to the language barrier problem as well as the hearing problem?

Mr. IMLAY. Yes.

Mr. BUTLER. When you talk about interpreters, you are also addressing yourself to interpret for those people who have hearing defects?

Mr. IMLAY. Yes, that is very correct, we certainly are.

We think this legislation is very needed, not only because of linguistic problems, but because of the hard of hearing problems that continually arise.

Now in a civil case where the Government is plaintiff, the costs of the interpreter could be taxed against the losing party at the termination of the litigation, in the judge's discretion. That is the gist of the bill. We do not address today the complex and different issues relating to a proposed change in the jury system of the U.S. District Court for the District of Puerto Rico. Those matters, we understand, will be the subject of a further hearing, in which some of the concerned judges will be asked to testify, including the chief judge of the U.S. District Court for the District of Puerto Rico, Jose Toledo.

There are certain amendments to this bill which we would like to suggest at this time. On a separate page I list these, but let me just briefly summarize them.

We have four amendments which would include, besides criminal cases and cases where the United States is the plaintiff, habeas corpus cases. We presently provide interpretive service under the Criminal Justice Act in habeas corpus cases. So that we wouldn't want to narrow the present practice because the United States, in one sense, is a party to habeas corpus case. But otherwise habeas corpus cases are very intimately related to the criminal process, and a person in a prison who is seeking habeas corpus relief needs an interpreter no less than the defendant in a criminal case. We offer in that respect four

amendments which would include those petitioning for a writ of habeas corpus, and we would urge that the committee adopt them.

Mr. EDWARDS. How many petitions do you have per year now?

Mr. IMLAY. The exact number I am not sure of. As you know, the Supreme Court has sharply curtailed the number of State habeas corpus cases. Many of those cases have gravitated into prisoner civil rights petitions. The number is large—I don't have our statistics here—I will be glad to furnish that to the committee.

Mr. EDWARDS. Is it in the thousands?

Mr. IMLAY. It is in the thousands. But the interpretive service would only be needed in a State habeas corpus case if a plenary hearing were scheduled, and in most of these cases there is no plenary hearing. We are only talking about a fraction of the total number of State habeas corpus cases initiated. As I say, there is presently in 18 U.S.C. 3006A(e) provision for other services to be furnished criminal defendants and also petitioners in habeas corpus. We aren't extending the law; we are just recognizing the present coverage of the law by that amendment.

Another amendment is a technical one which involves more or less of a clerical problem in the bill, and would merely transpose two paragraphs. It would amend page 14 of the bill by striking lines 7 through and including 21 in their entirety—well, to make a long story short, it would transpose two paragraphs and keep the same basic language, keep the same language that is now in the bill.

I will insert these amendments in the record, if I may.

Mr. EDWARDS. Yes, without objection they will be received.

[The suggested amendments follow:]

1. Amend line 20 on page 2 by inserting after "United States" the following: "(including a petition for a writ of habeas corpus initiated in the name of the United States by a relator)".

2. Amend line 10 on page 5 by inserting after "United States" the following: "(including petitions for writs of habeas corpus initiated in the name of the United States by relators)".

3. Amend line 8 on page 7 by inserting after "United States" the following: "(including petitions for writs of habeas corpus initiated in the name of the United States by relators)".

4. Amend line 14 on page 3 by striking out "a party or non-" and inserting in lieu thereof the following: "a party, or a non-".

5. Amend page 14 by striking lines 7 through and including 21 in their entirety and inserting in lieu thereof the following:

"(b) Notwithstanding any other law, the Director may appoint certified interpreters in accordance with section 604(a)(15)(B) of this title without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided, however,* That the compensation of any person appointed under this subsection shall not exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5, United States Code.

"(c) The Director may obtain personal services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5, United States Code."

6. Amend line 13 on page 11 by striking out "16" and inserting in lieu thereof "17".

Mr. IMLAY. Without duplicating the material in our prepared statement, I would like to make several other observations that have recently been brought to my attention by some of our district courts as late as yesterday.

The U.S. District Court for the District of New Mexico has brought to my attention an interpretation problem relating to situations where witnesses or parties speak Indian language which has no written form. This raises a particular problem for them, and Judge Bratton of the district court in New Mexico asked that I bring that to your attention. I think it is amply covered by the bill as it stands.

This is particularly troublesome to that court with respect to witnesses who speak the Pueblo tongue, which has numerous different dialects. As I interpret the bill, Indian interpreters could serve to interpret the testimony given in these dialects, and if a certified interpreter is not available, the services of otherwise competent interpreters could be used pursuant to section 1827(e)(1), the final clause.

Another problem that was brought to my attention yesterday by the chief judge of the U.S. District Court in Chicago raises a question concerning waiver of the use of an interpreter under the provisions of section 1827(f). He pointed out that this may create an opportunity for a party using an unscrupulous interpreter of his own. Such a problem may be particularly acute in organized crime cases in the Chicago area and similar cases. In other words, he fears the practice of bringing in an interpreter who will not interpret accurately or who has no scruples about falsifying testimony.

However, as I pointed out to him, I understand that the provisions of section 1827(f)(1) require that the presiding judicial officer give his approval to any waiver of a certified interpreter's services, and therefore, the court may control the use of noncertified interpreters under section 1827(f) (1) and (2). This would allow a court to limit waiver of offically certified interpreters except in cases of special necessity and in situations where the judge has some assurance that a noncertified interpreter will give an honest rendition of the testimony.

I might also point out that the chief judge of the U.S. district court in Chicago also urged the broadening of section 1828 of the bill to provide for simultaneous interpretive services in single defendant cases as well as multidefendant cases, or, in other words, that interpretation in the consecutive mode provided for in subsection (k) essentially be eliminated as the standard interpretative service. That, however, would obviously add greatly to the expense of the whole interpreter program, and to the difficulty finding those highly qualified persons who are capable of simultaneous interpretation. It takes a far more qualified interpreter to translate simultaneously testimony as it is given.

Mr. EDWARDS. Is that what this bill provides?

Mr. IMLAY. That's right.

Mr. EDWARDS. Aren't you referring to bills from previous years?

Mr. IMLAY. That is correct. And that is what this bill will provide. Heretofore we have had no authority to hire simultaneous interpreters. We have had a great deal of difficulty, as Mr. Ritchie well knows, having followed the situation, in certain cases where the judges have gone ahead and hired simultaneous interpreters. In order to have a simultaneous interpretation, usually you not only have to have the interpreter, you have to have booths and telephone connections, and it is quite an elaborate process.

Mr. EDWARDS. But there is nothing in this bill that provides for that?

Mr. IMLAY. Yes, there is.

Mr. RITCHIE. The bill does provide for simultaneous translation as a special service, primarily in multidefendant prosecutions. We have found through experience that if we have the option to provide simultaneous interpretations as an adjunct to the regular interpretive services we provide under the Criminal Justice Act, we can expedite those trials tremendously.

We have had a number of them up in the southern district of New York. If you are involved with a number of defendants, and each one has his own interpreter, the proceedings can be lengthened substantially, when you utilize the consecutive mode of translation. If we provide simultaneous translation, it is more expensive, granted, but one consequence is we can conserve judicial resources, the time of the judge, and the time of jurors in the courtroom, by shortening the proceedings.

As I said, however, that is the exception to the general rule, since we usually use consecutive translation.

Mr. BUTLER. How do you maintain a court transcript with simultaneous translation?

Mr. RITCHIE. Well, essentially the proceedings are conducted in English, and the court reporter reports and records everything in English. In these kind of cases where we have used simultaneous translation, the translation has been for the benefit of non-English-speaking defendants. We provide to them, through headphones and a sound system, a simultaneous translation of everything that was stated and spoken in the courtroom in English.

Mr. BUTLER. Does a record of a proceeding involving interpreters include a statement or record of the interpretation?

Mr. RITCHIE. No.

Mr. BUTLER. Is the beneficiary of an interpretive proceeding entitled to review the proceedings on the basis of determining whether or not there was a fair translation?

Mr. RITCHIE. That is a very difficult question to resolve. The proposal put forth in this bill would attempt to address it, by insuring before the proceeding begins that the interpreter is qualified. Qualification is the assurance for the benefit of the defendant that he is receiving an accurate translation of the proceeding.

Mr. BUTLER. At the present time, there is no assurance at all?

Mr. RITCHIE. That is correct; there is none.

Mr. BUTLER. No one has ever litigated that?

Mr. RITCHIE. Well, nobody knows how accurate the interpretation may have been except the interpreter. And he is the wrong person to look to for an impartial assessment of his performance.

Mr. BUTLER. The best way to avoid appeals in this area is to make sure there is no record of it. OK, thank you.

Mr. IMLAY. I might add in some cases the reporter—the official reporter—will make an electronic record, but that would only pick up those interpreters who are interpreting witness statements, it wouldn't pick up interpretations that are privately done at counsel table for the benefit of the defendant.

There is no way to preserve the accuracy of that. And that is one of the reasons I pointed out that this certification procedure is very essential and that we would, to the extent possible, want to discourage noncertified interpreters, whose accuracy can't be tested.

Mr. EDWARDS. Well, right now you are providing interpreters in Federal district courts and in magistrate proceedings, when necessary, is that correct? What about in bankruptcy court?

Mr. IMLAY. There is no way the bankruptcy judge or referee in bankruptcy can avail himself of the standard civil rule. There might be a counterpart in the bankruptcy laws.

Mr. EDWARDS. So they aren't provided for under the rule. Do they have trouble getting money for this? Do they currently have to ask the district judge if they may have an interpreter?

Mr. IMLAY. They would only be available for a person who could pay for them.

Mr. EDWARDS. Under this legislation, we would be changing the system so that the Government is paying for them?

Mr. RITCHIE. Mr. Chairman, I think the best way to view the change that this bill would effect is in these terms: Essentially the judicial branch perceives of the expense of an interpreter as an expense of litigation, to be borne by the parties. The Criminal Justice Act is a mechanism whereby the Government picks up that expense of litigation for a financially needy person. Except for that mechanism, when you are not involved with a person who is indigent in a criminal case, the basic principle is that the party must bear the expense of the interpreter, just as he must bear the expense of his own attorney. This legislation would enact a congressional declaration that in criminal cases and in civil cases initiated by the United States, the Government would assume these expenses as an expense of maintenance of the courts, as distinguished from expenses of litigation.

Mr. IMLAY. So this wouldn't apply to bankruptcy at all, in our understanding, Mr. Chairman. Nor would it apply to private civil cases.

Mr. RITCHIE. It reaches only those civil cases in which the United States is plaintiff.

Mr. EDWARDS. Well, that is certainly a limited number of cases.

Mr. RITCHIE. Essentially right now on the criminal side, there are gaps in the system for the provision of interpretive services because we are operating on the basis that we can pay for interpreters in criminal cases only when the defendant is provided representation under the Criminal Justice Act. That means he must satisfy the test that he is financially unable to obtain representation services himself.

Mr. EDWARDS. So you are going to pick up the tab for the richest?

Mr. RITCHIE. That is correct; this bill would have that effect. But I suppose the countervailing argument is it would provide a uniform system on the criminal side, at least, and simplify enormously the administrative tasks we have.

Also I should point out that currently we have 12 employee interpreters in various district courts throughout the country, the most recent one appointed was in the District Court for the Northern Mariana Islands. I think that court also will have problems similar to those the court in Puerto Rico encounters, because many of the people of the islands do not speak English. They speak Chamorro and Carolinian, and probably close to a majority of them do not speak English.

Mr. BUTLER. Is Carolinian something like Georgian?

Mr. RITCHIE. I think it is a Malayo-Polynesian language.

Mr. EDWARDS. Thank you. I assume a lot of interpreters are used along the American and Mexican border, is that correct?

Mr. RITCHIE. Yes; all 12 of the full-time interpreters are Spanish interpreters.

Mr. EDWARDS. A lot of those cases are drug cases, I presume, and criminal immigration cases?

Mr. IMLAY. Illegal entry cases. There are a great number of illegal entry cases along the Mexican border, and virtually every one of those requires an interpreter.

Mr. EDWARDS. Are all of you very comfortable with this bill? Do you really think it is necessary?

Mr. IMLAY. We certainly exclude the Puerto Rican problem, because that is going to be separately addressed. We think that this bill, in its other aspects, would be very, very helpful when you consider that 40 million Americans are involved and I again want to emphasize the problem of those who are deaf and cannot understand the spoken word in a courtroom.

Obviously there is no use of them even being there if they have no way to interpret what is going on.

Mr. EDWARDS. Mr. Butler?

Mr. BUTLER. I thank you very much. I have interrupted you a couple of times, so I think I have covered most of my questions.

Laying aside the Puerto Rican question, if we pass this legislation, are there going to be available enough interpreters to meet the demand or is this legislation going to cause much of a change in the demand?

Mr. RITCHIE. The only problem I perceive we might encounter is in the area of simultaneous interpretation. It is more difficult to obtain simultaneous interpreters who are qualified to perform that kind of service. I think there are probably enough within the United States. It might necessitate moving them around to those districts where we have a large problem of that nature.

Of course, there are substantial numbers of those types of interpreters up in New York City and many of them do work for the United Nations.

Those type of interpreters we would use, by the way, on a contract basis. We wouldn't have any of them on the payroll of the Government.

But in other situations, to provide the standard consecutive mode of translation, it might be more efficient overall in those districts where we have substantial numbers of non-English-speaking persons, to have full-time employees of the courts, who would be the official interpreters.

In other words, we would expand on the number of 12 which we have now.

Mr. BUTLER. What other languages will require a substantial number of interpreters other than Spanish?

Mr. RICHIE. Chinese, I think is one language that would be involved. Indian dialects out in the Western districts would be required also.

Mr. IMLAY. I think the Indian dialects are probably the most troublesome other than the Spanish language problem.

Mr. BUTLER. That troubles me to begin with. What is the index for need of an interpreter where people are marginally bilingual, one of the languages being English?

Mr. RITCHIE. The only answer I can provide is that it is within the sound discretion of the court to interview the individual, to ascertain whether he would be able to understand the proceedings in English. If he is able to understand English, the court would not appoint an interpreter. If the judge determines that the individual could not understand the proceedings in English, then, of course, the judge would appoint an interpreter.

Mr. BUTLER. Does this legislation address itself to any details of that process, or does it leave it to the Federal rules?

Mr. RITCHIE. I think it would be very difficult to articulate the kind of test you would want to impose in that area.

Mr. BUTLER. No; the test is one of sound judicial discretion, I believe.

Mr. RITCHIE. Yes.

Mr. BUTLER. My question is: What are the procedures under the various circumstances? Is it an adversary proceeding, or how does the judge decide this question, and what are the rights of the person under those circumstances? Is this addressed by this bill?

Mr. IMLAY. It is by motion. The bill would provide that this will be addressed by motion to the judge, and the judge will require any showing that he thinks is necessary on the hearing on the motion.

Mr. RITCHIE. It is upon a motion of a party or upon motion of the judge himself if he perceives, as the proceeding progresses, that there is a problem.

Mr. BUTLER. That is any time during the proceeding?

Mr. RITCHIE. Yes. But I would anticipate that these problems would be known at the beginning.

Mr. BUTLER. Yes. I do not know what would be the validity of the determination of the judge who decided I wasn't zeroing in on this.

Mr. RITCHIE. Really that was intended to deal with a situation where, after a proceeding has begun, and a non-English-speaking witness is added to the witness list. At this point in time there would be a need to bring in an interpreter simply to translate for that witness.

Mr. BUTLER. Yes. I am thinking in terms of the litigant's rights. What good are interpreters' services provided in the courtroom if they are not provided during the time of preparation for trial?

Mr. IMLAY. We do provide that, Congressman Butler. Under the Criminal Justice Act, we will give a defendant an interpreter so that he can go around and interview witnesses, you know, either because he doesn't speak the English language, or because the witnesses don't speak English. We have sent public defenders to Japan, for example, who had to go around and interview witnesses who spoke the Japanese language. So that out-of-court-type defense service is already provided under the Criminal Justice Act.

Mr. BUTLER. That is for indigent defendants, or is it for all?

Mr. IMLAY. Indigent defendants. The defendant who can pay for it, who doesn't qualify under the Criminal Justice Act, has to pay for his own interpreter.

And also I might point out under this bill if the Government presents its witnesses, the U.S. attorney furnishes the interpreter for the Government's witness.

Mr. BUTLER. Thank you, Mr. Chairman; I yield back the rest of my time.

Mr. EDWARDS. Mr. Volkmer?

Mr. VOLKMER. I am sorry I wasn't here earlier, Mr. Chairman. I was with Mr. Conyers' Subcommittee on White Collar Crime, which is also very improtant.

As I understand it, the effective date of the legislation is October 1 of this year. Is that correct?

Mr. RITCHIE. Yes, that is correct; at the beginning of fiscal year 1979.

Mr. VOLKMER. At the present time the subcommittee is planning to hold additional hearings in August. If we assume that the bill is passed in September and signed by the President soon thereafter, is the October 1 date a realistic date?

Mr. IMLAY. I think that would be realistic in some terms. It, certainly wouldn't be realistic for the Pureto Rican court part of it and we are not addressing that here today.

Mr. VOLKMER. How long will it take to find the interpreters needed to meet the requirements of this bill?

Mr. RITCHIE. There certainly would not be certified interpreters available on October 1. And under those circumstances the courts would have to continue to use any interpreter who is available.

I would envision that it would take a substantial period of time, from 6 months to a year, to begin the implementation of the certification program throughout the country. However, as I said, I don't think the lack of that certification program or the actual certification of interpreters on October 1 would inhibit the continuation of the judicial proceedings.

Mr. VOLKMER. All right. What is the present salary level for interpreters? What is their GS level?

Mr. RITCHIE. The employees in the courts are not under the general schedule; they are covered by our judicial salary plan. Essentially, however, the salaries are parallel and the salary range for a nonsupervisory interpreter in a district court is from $8,900 to $14,431.

Mr. VOLKMER. Where does that range apply?

Mr. RITCHIE. In the district courts.

Mr. VOLKMER. That is in any district court throughout the United States?

Mr. RITCHIE. Yes, that is correct.

Mr. VOLKMER. That is for nonsupervisory interpreters?

Mr. RITCHIE. That is correct.

Mr. VOLKMER. The maximum is $14,431?

Mr. RITCHIE. Yes.

Mr. VOLKMER. What does a court reporter get?

Mr. RITCHIE. The salary of a court reporter is established by the Judicial Conference of the United States. There are two steps involved, depending upon the prior experience of the court reporter. The salaries are $23,337 and $24,504.

Mr. IMLAY. But the court reporter—that is, the salary of the court reporter—but I might explain that the court reporter——

Mr. VOLKMER. My next question was: What are the additional fees the court reporter receives in transcriptions?

Mr. IMLAY. He is an entrepreneur for the sale of transcripts to private parties. The Judicial Conference prescribes the amount he can receive per page.

Mr. VOLKMER. What is that now per page?

Mr. RITCHIE. The rates are $1.50 per page for the original, 50 cents for the first copy, and 25 cents for every copy thereafter, for regular transcript.

Mr. VOLKMER. This question is an aside to the present discussion. If the Chairman will indulge me, I would like to know if you perform any review of the total income received by court reporters?

Mr. IMLAY. We have a report that is sent in to us, as I understand it, that reflects not only their salary, but their outside income and that is so that the Judicial Conference can from time to time establish the salary rate and also from time to time adjust the transcription rates which it sets.

Mr. VOLKMER. Is there any plan to review the salary scale of your nonsupervisory interpreters?

Mr. IMLAY. I would certainly hope they would review these, especially if this bill were to pass. Obviously, there is going to have to be a review because the simultaneous——

Mr. VOLKMER. You will establish a certification process?

Mr. IMLAY. Yes, not only for that, but the simultaneous interpreter, the U.N.-type of interpreter, is a highly skilled person who——

Mr. VOLKMER. You are not going to get very many of them to work for the courts for $9,000.

Mr. RITCHIE. No. The standard rate for a simultaneous interpreter now approaches, if it doesn't exceed, $200 a day. And, in fact, when you use a simultaneous interpreter for several weeks, you have to pay him 7 days a week.

Mr. VOLKMER. Thank you.

Mr. RITCHIE. So it does become an expensive proposition. As I said earlier, you have to weigh that against the considerable savings in judicial resources that can be effected by the utilization of the service.

Mr. VOLKMER. Thank you, Mr. Chairman.

Mr. EDWARDS. Counsel.

Ms. GONZALES. Thank you, Mr. Chairman. Mr. Imlay, you made reference to the use of simultaneous interpretation, similar to that used at the United Nations. I recall reading testimony during the Senate hearings in 1973 and 1974 which was presented by an interpreter for one of the district courts. The interpreter testified that he had had somebody develop a portable interpreter's kit for him which cost approximately $150 and which he used for simultaneous interpretation.

Is there any reason why a similar portable kit could not be used rather than the more expensive U.N.-type of interpretation?

Mr. RITCHIE. The equipment is not the major expense involved in providing simultaneous translation. The major expense is the cost of the personal services of the simultaneous interpreters.

On the side of the equipment, the equipment probably does range from several hundred dollars to several thousand dollars in cost. However, that is not the significant cost involved.

Mr. IMLAY. If you had a very large case, where there were quite a few people at defense table and so forth, you would probably need more elaborate equipment. I remember in the *Axis Sally* case, for example, there was very elaborate equipment so the people in the audience and the jurors could hear the translations from German into English.

Mr. RITCHIE. Our experience does indicate the equipment will cost more than the figure used in the 1973–74 hearings, primarily because we use the standard-size courtroom, which is smaller now. Therefore, you essentially have to provide a soundproof booth in which the interpreter sits. He listens to the proceedings in English through earphones, and speaks simultaneously into a microphone. His translation is transmitted electronically to the headphones of each defendant.

It would be difficult to have him speaking in the same room without proper acoustical preparations, such as a soundproof booth. Otherwise listeners would hear no more than a "babble of sounds."

Ms. GONZALES. Does your office currently issue guidelines for use by the district courts in their selection of interpreters?

Mr. RITCHIE. The Administrative Office has no authority now to establish criteria for the qualification and certification of interpreters. This is one area in which this bill would make a substantial step forward.

Ms. GONZALES. So each court hires interpreters independently?

Mr. RITCHIE. That is correct.

Ms. GONZALES. Thank you. I have no further questions, Mr. Chairman.

Mr. EDWARDS. Mr. Starek?

Mr. STAREK. Thank you, Mr. Chairman. I have a couple of questions. I am trying to understand how this bill would affect the current practice of judicial discretion.

If this bill were enacted into law, would the request of a party to the action, where it applies, that the Director of the Administrative Office of the U.S. Courts will make the determination as to whether or not a special interpreter is necessary, or will this still be a matter for judicial discretion?

Mr. RITCHIE. It is preserved to judicial discretion. When you speak of a special interpreter, you take yourself out of the arena of the everyday interpreter who is provided as a matter of course to a non-English-speaking defendant or to a defendant with a hearing impairment or a speech impairment. It was intended, however, that the Director of the Administrative Office should have some discretion to set up standards for the use of special interpretation services, meaning simultaneous interpretations, because the costs far exceed those of consecutive interpretation. We intend there be some kind of cost analysis there to insure that it is worthwhile to provide simultaneous interpretation.

Mr. STAREK. Currently you have 12 full-time interpreters on board. You testified earlier that if this bill were enacted into law you would have to increase that number. Do you have an estimate of how many more you would hire?

Mr. RITCHIE. I do not have an estimate of the number now. It essentially involves an analysis of the costs to us in the various districts of what we can call contract interpreters—those individuals whose services are obtained under contract—to determine whether it would be more economical to appoint full-time official court interpreters to provide the services in that court. And that is an analysis which has to be made on a court-by-court basis.

Mr. STAREK. I see. But that has not been done yet?

Mr. RITCHIE. No, we don't have any figures on that at this time.

Mr. STAREK. One final question, if I may, Mr. Chairman. The General Accounting Office conducted a study of this problem. While their conclusion is somewhat hard to identify, I get the impression, at any rate, that they thought that certainly the entire area was a problem in State courts, but not so much in Federal courts.

I wonder if anyone on the panel could address that.

Mr. RITCHIE. The only comment I could offer is this: There is no mechanism now to assess the accuracy of the translation provided by court interpreters. If there be such a problem, it is a hidden problem. The only person you could go to to ascertain whether there is a problem would be the interpreter and he is the wrong person to ask.

Mr. NEJELSKI. If I might supplement that, I am not even sure the interpreter in some cases would know if he is doing a good job or not. He may think he is terrific and, in fact, be below any standard we would normally accept.

In terms of the relative use, I have had, as I mentioned, some experience at the State level in Connecticut, and the interpreters were in very heavy demand. I would note one added service that they performed on a regular basis, in addition to the interpretation of testimony, was that they would often help in the morning with crowd control, with witnesses, and other people who didn't know where to go, who only spoke Spanish. It was a very helpful matter, especially where you have multiple courtrooms, where people can be sitting in the wrong courtroom waiting for a case to be called that is down the hall, causing many administrative problems.

Consequently, we found that the advantage of full-time interpreters was more than just the translation in the court itself.

In the Federal system, usage would depend on the court. The Southern District of New York and others might benefit from this type of full-time service. There may be some districts that have low numbers of people for whom English is not their language, and that would not be needed.

Mr. STAREK. I understand that the certification problems cross both State and Federal courts. What I am concerned about is the number of parties who would require interpreters. I think if there were any objections to this, they would be that we would create a whole new office within the Administration Office of the U.S. Courts, employing numerous people on the Federal payroll without enough to do.

Is that a fair allegation?

Mr. IMLAY. I don't think that this is going to create any overhead problems. We don't have one person that is assigned to just the problem of interpreters, to my knowledge, in the whole Administrative Office.

So that I would envision that the administrative problems could be absorbed by the Administrative Office and through the clerk's offices in the courts. They have a lot to do, and while it doesn't get less every year, I think that could be absorbed.

While I am on that subject, I might point out one thing. In addition to the interpreters we have been talking about, many of the clerk's offices already have Spanish-speaking deputy clerks, who do perform various services for Spanish-speaking people who come to the courthouse and you can imagine, since a great number of our cases involve illegal entry matters, the Mexican border matters, and so forth, that

it is essential that we have qualified people in the clerk's offices who can talk to the Spanish-speaking parties and witnesses and others.

Even jurors are called and come to explain that they can't understand the language, you know, something like that. I don't think that this involves a great deal of administrative overhead.

Mr. STAREK. Thank you. Thank you, Mr. Chairman.

Mr. EDWARDS. I have a question about Puerto Rico, Mr. Huerta. Would you say that generally the quality of justice in the State courts is better than in the Federal district court because of this very strict language requirement?

Mr. HUERTA. I am sorry, Mr. Chairman, I am just not competent to answer that question. I have not practiced law in Puerto Rico. Mr. Castellanos is a Puerto Rican lawyer and he can probably answer that question.

Mr. CASTELLANOS. Mr. Chairman, would you repeat the question?

Mr. EDWARDS. Is the quality of justice in the State courts in some respects superior then that in the Federal district court?

Mr. CASTELLANOS. Well, I would have to say that we have to consider the Federal court as a complement. It is a court to protect the interests of the U.S. Government and to protect the rights of citizens of different States among other things. And I will say that as a complementary court, it is basically equal to the ones we have in the State courts; there are not big differences between one court and another. Of course, in the Federal court we have trial by jury in civil cases. And that is an advantage that we have in the Federal court that we don't have in the State court.

I will say that justice is equal in both courts. But we need the Federal court as a guarantee of certain rights that are only protected in Federal courts and not in State courts.

But in my humble opinion there is no big difference in the quality of justice.

Mr. VOLKMER. Will the chairman yield on that?

Mr. EDWARDS. Yes.

Mr. VOLKMER. I can well remember back when we were working on the judgeship bill talking about this problem, and it is my understanding that it was a serious problem. In my conversations, that was the impression I got, the fact that it necessitated the use of interpreters many times. Is that correct?

Mr. CASTELLANOS. Yes, sir, in the Federal courts; yes.

Mr. VOLKMER. Is this just a fact that causes delays or did it in any way impinge on justice in the Federal courts? Would you have an opinion on that?

Mr. CASTELLANOS. Well, sir, I was an assistant U.S. attorney in Puerto Rico and I can tell you that we can accelerate the disposition of cases if the proceedings were allowed to be conducted in Spanish.

Of course, the continued use of interpreters causes on some occasions delays. And that is one of the reasons why we were anxious to get the additional judgeships. As a matter of fact, the interpreters are needed and by reason of their continuous use delays are caused.

Mr. VOLKMER. Usually where they are mostly native-speaking individuals that are involved, the cases would move faster then, in your opinion, without the use of the interpreter and the use of the Spanish language?

Mr. CASTELLANOS. According to the information that I have, about 80 percent of the defendants are Spanish-speaking in criminal cases. But I don't have the figures for the civil cases. But the cases would move faster if we are allowed to use Spanish in the procedures before the court.

Mr. VOLKMER. Presently, do all of the jurists, Federal judges, speak Spanish?

Mr. CASTELLANOS. Yes, sir.

Mr. VOLKMER. They are all natives?

Mr. CASTELLANOS. Yes, sir. The U.S. attorney, the U.S. marshal, and the clerk of the court.

Mr. VOLKMER. And the judges, all of them?

Mr. CASTELLANOS. Yes, sir, all of them.

Mr. VOLKMER. Thank you. The answer is obvious to me.

Mr. EDWARDS. Mr. Drinan?

Mr. DRINAN. Thank you, Mr. Chairman. I want to thank all of you for your helpful testimony. I am sorry I had to be away for a time. There was a need for a quorum in Government Operations, where I serve.

I am intensely interested in this subject, and I hope we can develop all of the issues you raise here.

Mr. Chairman, I just have one observation at this time. It seems to me it is quite imperative to have a hearing in San Juan. Thank you very much.

Mr. VOLKMER. We are not going to wait until winter to have the hearing, are we? We need to move on the bill.

Mr. EDWARDS. I believe there are no more questions. We thank the witnesses very much for splendid testimony. We also thank Ms. Champion who was kind enough to serve as our interpreter.

[Thereupon, at 11:40 a.m., the hearing was concluded.]

COURT INTERPRETERS ACT

WEDNESDAY, AUGUST 2, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:45 a.m., in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Drinan, McClory, and Butler.

Also present: Helen Gonzales, assistant counsel; Roscoe B. Starek III, associate counsel; Robert Chandler and Irene Sioude, interpreters.

Mr. EDWARDS. The subcommittee will come to order.

Today we continue our hearings regarding legislation which would mandate interpreters in Federal criminal and civil proceedings.

The testimony today will focus on the problems faced by the hearing and speech impaired and by those individuals who speak solely or primarily a language other than the English language.

The bills before this subcommittee are designed to insure that all parties, defendants, and witnesses in Federal criminal and civil proceedings are provided with a certified interpreter if their communication or comprehension capabilities are inhibited because English is not their primary language or because of a hearing or speech impairment.

Only by insuring that qualified interpreters are made available in court proceedings to eliminate existing communication and comprehension barriers can we guarantee that equal justice for all becomes a reality.

Before I introduce our first witnesses, I would like to note for our subcommittee members and our witnesses that we are being assisted by Robert Chandler, a certified interpreter for the deaf, who was made available to us through the Gallaudet College for the Deaf. I want to thank Mr. Chandler for assisting us today.

Our first witnesses will address the problems faced by the hearing and speech impaired in Federal court proceedings. They are: Mervin D. Garretson, immediate past president of the National Association of the Deaf; Sy DuBow, legal director, National Center for Law and the Deaf, who is accompanied by Gary Hinkley; and Carl Kirchner, immediate past president of the Registry of Interpreters for the Deaf.

Mr. Garretson, we are delighted to have you here. You may proceed with your statement.

TESTIMONY OF MERVIN D. GARRETSON, IMMEDIATE PAST PRESIDENT, NATIONAL ASSOCIATION OF THE DEAF; SY DuBOW, LEGAL DIRECTOR, NATIONAL CENTER FOR LAW AND THE DEAF, ACCOMPANIED BY GARY HINKLEY; AND CARL J. KIRCHNER, IMMEDIATE PAST PRESIDENT, REGISTRY OF INTERPRETERS FOR THE DEAF, INC.

[Mr. Garretson's statement was interpreted into spoken English by Robert Chandler.]

Mr. GARRETSON. Good morning, Mr. Chairman and Members of the U.S. Congress. Thank you for the opportunity to apppear before you this morning. I want to point out that although I do have usable speech, it is not clear to most people who are not knowledgeable with deafness. Now I am using a reverse interpreter, which means the interpreter is using my speech and changing it into speech.

My name is Mervin D. Garretson. I am employed as a special assistant to the president of Gallaudet College. I am the immediate past president of the National Association of the Deaf, and today I am testifying in behalf of the board of directors and the membership of that association. We are a consumer organization—probably the largest such for the deaf in the world—with 47 State association affiliates and an aggregate membership of 18,000 deaf adults, parents of deaf persons, professionals in the area of service to deaf citizens, interpreters, educators and the like. But of course there are 13 million who are not members.

I am testifying in support of the Bilingual, Hearing, and Speech Impaired Court Interpreter Act, H.R 10228, which would provide qualified interpreters in Federal court proceedings for persons whose primary language is not English. There is another group of deaf people that use ASL, American Sign Language, which is in effect a foreign language. It has its own grammar and its own rules and syntax and so forth.

Although I have with me and you have copies of the prepared testimony which was prepared by staff people at the national office, I would like your permission to depart from it.

Mr. EDWARDS. Without objection, the entire statement will be made a part of the record and the gentleman may proceed.

[The information follows:]

Mr. Chairman and other members of the Congress, My name is Mervin D. Garretson. I am employed as a special assistant to the president of Gallaudet College. I am the immediate past president of the National Association of the Deaf and today I am testifying in behalf of the Board of Directors and the membership of that Association. We are a consumer organization—probably the largest such for the deaf in the world—with 47 State Association affiliates and an aggregate membership of 18,000 deaf adults, parents of deaf persons, professionals in the area of service to deaf citizens, interpreters, educators and the like.

I am testifying in support of the Bilingual, Hearing, and Speech Impaired Court Interpreter Act, H.R. 10228, which would provide qualified interpreters in federal court proceedings for persons whose primary language is not English.

I intend to be brief because we are aware that other supporters of this legislation also will testify. Actually, is it not a sad commentary on the state of our rights as citizens that these hearings are considered to be necessary? The rights of all citizens are guaranteed by the Constitution of the United States. More than 200 years after that fantastic document was composed, we are compelled to defend our rights to the benefits it provides. To us, this is ironic and enigmatic.

Throughout the history of mankind, the deaf population has been largely overlooked, or ignored, or patronized. Our beautiful and graphically expressive language

of Signs has been suppressed—principally because of the inability of persons who are not deaf to understand it, and/or to acquire fluency in its usage. Of all of the hundreds of languages and dialects used throughout the world, Sign Language is the only one which does not depend upon speech and hearing. In consequence, only within the past decade have linguistic experts realized and accepted the fact that heretofore they had erred in attempting to evaluate Sign Language by the same criteria used to evaluate spoken languages. There now is proof positive that Sign Language has a grammar and syntax uniquely its own, and the principles upon which it is based—once they are carefully examined and understood—conform to the basics required of any other language. Well over 300 colleges and universities now offer courses in Sign Language for foreign language credit, including some at the doctoral level.

The Registry of Interpreters for the Deaf was established and fostered in its formative years largely through the encouragement and active support of the National Association of the Deaf. As opportunities increase for deaf citizens in such areas as education, employment, civic responsibility, social service programs and other similar concerns, our "bread upon the waters" gesture toward the R.I.D. is returning to us with manifold benefits. Interpreting for deaf persons now is an established and highly skilled profession.

A number of States have laws providing deaf persons with the services of qualified interpreters in legal proceedings, both within and outside of courtrooms. We strongly support H.R. 10228 for the benefits it would provide for deaf citizens as well as for others who may have difficulty with the complexities of the English Language.

In closing, I wish to emphasize the value of reverse interpreting skills. While I am able to speak understandably in structured situations, I am using the services of a reverse interpreter to call attention to two vital points: the first is that it is a mistake ever to equate either speech skills or fluency in English with intelligence; and the second is that the message I want to convey to you if of much more importance than demonstrating that some of you probably could understand my speech part of the time. Similarly, in court proceedings, the key to equal justice is lucid communication—not speech; not English skills. The pending legislation would help to ensure full and equal justice for more than 13 million Americans with impaired hearing and some 35 million others who can communicate more readily through an interpreter. We can think of no valid reasons why anyone should oppose its favorable passage.

Thank you for providing us with the opportunity to be heard in support of this milestone legislation.

Mr. GARRETSON. I would like to give a brief rationale for the need for sign language interpreters. When a person loses his hearing, communication avenues become exremely restricted. We are left with several alternatives. One is through hearing aids, if you have residual hearing, but many of us do not; we have no hearing at all.

The second alternative is through lipreading, which is a highly inexact science and very difficult for the average deaf person.

The third way would be through writing, and that is very cumbersome and slow.

Fourth is what we are doing now, through sign language. That seems to be the quickest and most visible way for deaf people to communicate with people who do not sign, by using interpreters.

Let me quickly show you some of the problems involved in lipreading. My wife happens to be a professor of lipreading at Gallaudet College. Lip reading is an inaccurate definition. Really, it is a speech reading. You do not read the lips, you read the speech. To do this successfully, you have to be pretty skilled in two areas: One, we call the physiological, and the other is the mental.

I would like to point out that the average person speaks 120 words a minute. Of these 120 words, 50 percent are visible. Of those 50 percent that are visible, three-fourths are very similar.

The eye can follow 13 syllables per second. But that is an optimum. The average deaf person may catch eight movements.

Most speech sounds are very obscure and barely visible. Forty percent of all speech is hidden. By that I mean sounds like "k," the hard "g," the "t," the "n," are not shown on the lips. They are hidden inside.

Many sounds are homophonous. They look alike—for example, mat and bat. They look exactly the same on the lips.

We have identified seven groups of consonants which look exactly the same on the lips. Then you have other problems like mustaches, beards, people with cigarettes, pipes, personal idiosyncracies. Some people cover their mouth and scratch. You have dialects, southern drawls, a Yankee drawl.

So what I am trying to show is it is very, very complex, very difficult to depend only on lipreading, especially in a court of law where a man's life or legal rights may be involved.

For that reason, we support this law very strongly with a sign language interpreter. The communication is clearer, unambiguous, and I believe it will protect all hearing-impaired American citizens.

With that, I think I will stop. If later there are questions, I would be happy to answer them. Please be assured that all 13 million deaf people in this country support very strongly this proposed legislation.

Thank you very much.

Mr. EDWARDS. Thank you very much, Mr. Garretson, for your interesting and helpful testimony. We appreciate it very much.

We will have testimony of Mr. DuBow, legal director for the National Center for Law and the Deaf. You are welcome. Without objection your full statement will be made a part of the record, and you may proceed.

[The prepared statement of Mr. DuBow follows:]

STATEMENT OF SY DUBOW, LEGAL DIRECTOR,* NATIONAL CENTER FOR LAW AND THE DEAF, IN SUPPORT OF H.R. 10228

Mr. Chairman and members of the Judiciary Committee: my nome is Sy DuBow and I am the Legal Director of the National Center for Law and the Deaf (NCLD). NCLD is a program of Gallaudet College, the world's only liberal arts college for hearing-impaired students. Our purpose is to provide legal services and representation for the 13.4 million hearing-impaired citizens of the United States.

I am testifying in support of the Bilingual, Hearing and Speech Impaired Court Interpreter Act, HR 10228, which would provide qualified interpreters for deaf persons in federal court proceedings initiated by the United States Government.

1. THE NEED FOR SIGN LANGUAGE INTERPRETERS IN FEDERAL COURT PROCEEDINGS

Communication barriers imposed by hearing impairment face over 13.4 million citizens of the United States.[1] Of those hearing impaired citizens, 1.7 million are completely deaf and are therefore totally unable to hear or comprehend speech.[2] Basic considerations of fairness, on which our system of justice is based, require that when these citizens are brought into federal court they be provided with the assistance needed to ensure meaningful participation in the judicial proceedings.

Federal judges are not presently required by statute to appoint interpreters in any situation.[3] That they are reluctant to use the discretionary powers granted to them has been documented numerous times, and is illustrated by the attached affidavits.

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* This testimony was prepared with the assistance of Elaine Gardner.

[1] J. Schein & M. Delk "The Deaf Population of the United States" 16 (1974) (National Association of the Deaf).

[2] Id.

[3] Federal Rules of Criminal Procedure, Rule 28; Federal Rules of Civil Procedure, Rule 43(f).

The attached affidavit of Mr. Alfred Sonnenstrahl shows the difficulties this deaf gentleman recently had in obtaining an interpreter in U.S. Tax Court for an appeal of a tax audit. Mr. Sonnestrahl was told initially to bring his own interpreter. Mr. Sonnenstrahl, a well-educated deaf person, told the court he would not appear until the court appointed an interpreter and it was his perserverance through letter writing that finally resulted in the Court appointing an interpreter. Many less persistent deaf people would have accepted the initial failure of the Tax Court to provide an interpreter. HR 10228 would ensure that all deaf people in this situation are provided a qualified interpreter from the onset of court proceedings without necessitating their fighting for this right.

D. Gary Hinkley is another deaf man who very recently was denied an interpreter in the U.S. District Court for Maryland. Mr. Hinkley contested a traffic ticket he received from a federal police officer. When he arrived at the district court, the court informed him that he must return with his own interpreter. Our office represented him and requested by letter an interpreter which was denied. On his court date, we made an oral motion for the appointment of a qualified interpreter. The court denied the motion for an interpreter stating that lipreading would be satisfactory. The judge looked at Mr. Hinkley and spoke clearly, asking him orally if he understood what was being said but, Mr. Hinkley did not understand what he was saying. (The affidavit of Mr. Hinkley's attorney, Diane Shisk, is attached.) Our client has, like most deaf people, difficulty lipreading and he also was not able to use his voice.

Qualified interpreters are an indispensable communication bridge between deaf and hearing people. Other methods of communication for deaf persons, such as lipreading or the exchange of written notes, are inaccurate and inefficient especially in court room situations.

Lipreading ("speechreading") is a haphazard means of communication for even those deaf persons most proficient at this skill. forty to sixty percent of English sounds are homophonous, that is, their formulation on the lips is identical to that of other sounds.[4] The ambiguity of lipreading is demonstrated by the sounds for "t," "d," "s," "z," and "n," which all look the same on the lips.[5] Information collected during the 1971 National Census of the Deaf Population indicated that 25.2 percent pf deaf adults, twenty-five to sixty-four years of age considered their lipreading ability as poor to nonexistent.[6] "In fact even the best speechreaders in a one-to-one situation were found to understand only twenty-six percent of what was said [and] [m]any bright deaf individuals grasp less than five percent."[7]

Data on the reading comprehension of deaf students casts serious doubt on the accuracy and efficacy of using written messages in a legal proceeding or conference and on the hearing-impaired citizen's ability to understand legal documents.

According to the 1971 Annual Survey of Hearing-Impaired Children and Youth, reading comprehension is their most difficult academic area, and the area most severely affected by deafness. The typical sixteen-year old hearing-impaired student reads at a 3.8 grade level and the eighteen-year old student reads at a 4.2 grade level. Standard reading tests show that by the time they leave school, deaf children rarely exceed the fifth grade level.[8] It has also been shown that deaf students have difficulty comprehending printed questions.[9]

Real comprehension of written material often depends upon incidental learning which comes about through day-to-day experiences such as conversations, radio, and television. Since hearing-impaired citizens are disadvantaged in obtaining this incidental learing, they may not fully comprehend the import of words. According to a survey of hearing-impaired children, only twenty-five percent of the sixteen, seventeen and eighteen years olds would be able to adequately understand a newspaper and at best, only fifty percent of the nineteen-year old students would be able to do so.[10]

The extensive use of idioms in the English Language poses significant reading problems for deaf people.[11] As a result of their low comprehension level of idiomatic

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[4] M. Vernon & J. Mindel, "They Grow in Silence" 96 (1971) (National Association of the Deaf).

[5] Interview with James C. Woodward, Jr., Assistant Professor of English and Linguistics, Linguistics Research Laboratory, Gallaudet College, Washington, D.C. (December 6, 1976).

[6] M. Vernon & J. Mindel, supra, note 3, at 96.

[7] J. Schein & M. Delk, supra, note 1, at 63.

[8] S. DiFrancesca, "Academic Achievement Test Results of a National Testing Program for Hearing-Impaired Students" 39 (1971) (Office of Demographic Studies, Gallaudet College, Washington, D.C.).

[9] K. Russell, S. Quigley, & D. Power, "Linguistics and Deaf Children" 202 (1976) (Alexander Graham Bell Association for the Deaf).

[10] Conley, "The Role of Idiomatic Expressions in the Reading of Deaf Children," 121 Am. Annals of the Deaf 381 (1976).

[11] Id., at 384.

expressions deaf persons have difficulty in understanding legal documents. For example, the expression "under arrest" in the Miranda warnings would be puzzling to many deaf people since "under" to them means "beneath."[12]

The difficulties many deaf persons have in understanding spoken and written English therefore preclude their use of lipreading or written messages as adequate means of communication. The most efficient and accurate method of communication between the hearing and hearing-impaired communities is the use of qualified Sign Language interpreters.

Most deaf and many hearing-impaired persons use Sign Language as their primary mode of communication. Sign language is an indisputedly quicker means of transmitting ideas to and from a deaf person than is writing or lipreading. It is also a more accurate and descriptive language for those deaf people who are not fluent in written or spoken English.

In criminal cases involving an indigent person, court provision of interpreters has been held required by the Fifth and Sixth Amendments to the U.S. Constitution. See *United States ex rel. Negron* v. *State of New York* 310 F. Supp. 1304 (E.D.N.Y. 1970), aff'd. 434 F. 2d 386 (2d Cir. 1970). This constitutional mandate logically should extend to provision of an interpreter upon arrest, so that the deaf person is able to comprehend fully his *Miranda* rights. It should also encompass the provision of an interpreter during all pretrial proceedings, and during all communication between the accused and his attorney, to ensure the hearing-impaired defendant the effective representation the Sixth Amendment to the Constitution has been held to guarantee.

In addition to recognizing the constitutional necessity of an interpreter in criminal proceedings involving an indigent accused, HR 10228 wisely provides for interpreters for all defendants and witnesses needing such assistance, in any criminal or civil proceeding initiated by the United States. As the Senate Report noted: "The committee considers the role played by the interpreter to be so basic that it should be part of the service offered to citizens as a cost of maintenance of the courts, and not a cost of litigation." at p. 8.

The cost to the U.S. Government to provide interpreters will be minimal. The Administrative Office of the United States Courts estimated that the initial cost of implementing S 819, the original Bill to provide interpreters for deaf persons in all federal court proceedings, would be only $260,000.[13] The modifications made in S 819 when it was incorporated into S 1315, i.e., limiting coverage to actions initiated by the United States Government, lowers the cost estimate for this identical House legislation.

11. H.R. 10228 WILL INSURE THE APPOINTMENT OF QUALIFIED INTERPRETERS IN FEDERAL COURTS

Such federal legislation will serve as a model for enactment of state laws to correct the frequent miscarriages of justice in state and local courts due to the use of unqualified and biased interpreters or not appointing any interpreter at all.

In a rape case in Virginia involving a deaf female victim, a judge at the preliminary hearing appointed an interpreter who was not skilled at reading the signs of a deaf person. When the prosecutor asked the deaf victim what happened, she made the sign for forced intercourse. The interpreter, however, told the court that the deaf victim said they made love. Not only are these two signs radically different, but so are the legal implications in a rape case where force is the essential element. The victim was also asked what she was wearing. When she signed "blouse," the interpreter said "short blouse," which tended to put the victim in a promiscuous light. At the jury level, the National Center for Law and the Deaf found a qualified interpreter who, after a pretrial orientation, was readily able to understand the victim's signs.[14]

The National Center for Law and the Deaf has also been apprised of many other court room situations in which interpreters censored information, had conflicts of interest, or were basically incompetent. For example, we know of lower courts appointing policemen who only know fingerspelling to be court interpreters. HR 10228 would go far to remedy these problems. Section 1827(b) established a duty on the Director of the Administrative Office of the Courts to prescribe and certify the qualifications of persons who may serve as certified interpreters in the federal courts. This Section also requires the Director to maintain a current list of such interpreters.

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[12] Statement, December 1976, of Mary Z. Furey, Ph.D., Associate Professor, Office of Educational Technology, Gallaudet College, Washington, D.C.

[13] The Bilingual, Hearing & Speech Impaired Court Interpreter Act, Senate Committee Report, S. Doc. No. 95, 95th Cong. 1st Sess. 10 (1977).

[14] *Commonwealth* v. *Edmonds* (Va. 1976).

According to the Senate Committee Report, for the certification of Sign Language interpreters, the Director must consult with the National Registry of Interpreters (RID), state chapters of the RID, the National Association of the Deaf and State Associations of the deaf. We urge this Committee to endorse the Senate Committee Report in this respect. The National Registry of Interpreters for the Deaf (RID) was established in 1964 through support from the Vocational Rehabilitation Administration, Department of Health, Education and Welfare. RID has chapters in 46 states. Among its other activities, RID promulgates standards and testing procedures for the certification of interpreters, and administers these certification examinations.

The acquisition of an interpreter certified by RID or approved by the NAD or State Associations of the Deaf, will help to remedy the current problems of misconduct and incompetency outlined above. Moreover, this Bill requires the court to dismiss an interpreter who is unable to communicate with the hearing-impaired person. See Section 1827(e)(3). The Senate Committee Report on S 1319 also recognized that interpreters are protected by the attorney-client privilege and can not be compelled to testify about communications made during the lawyer-client relationship. Instances of interpreters being compelled to testify do happen. Two years ago in Maryland, an interpreter was subpoeaned to testify before a grand jury about the conversations between a deaf person charged with murder and his attorney with relatives present. The interpreter refused to testify on the grounds of privilege and faced the threat of jail. We are enclosing for the record a newspaper account of that case. We urge this Committee to endorse the Senate Committee Report language on this vital area of confidentiality.

It is important to note that HR 10228 can be used not only to benefit the many hearing-impaired citizens who use Sign Language as their means of communication, but also hearing-impaired people who do not know sign language but have been trained in lipreading. In a court room situation, where the distance between people can be great and there are many people talking, an oral interpreter can be an important tool to help the lipreader. The oral interpreter repeats every word spoken silently, so that the hearing-impaired person sitting next to him can lipread.

At present there exists no standardized means by which the court can quickly secure a qualified, certified Sign Language interpreter for deaf litigants or witnesses. Section 1827(a) authorized the Director of the Administrative Office of the Courts to maintain a master list of court-certified interpreters, so that the interpreters will be readily found and those employed will always be sufficiently skilled.

HR 10228 has the additional advantage of providing a model for states to look to when promulgating their own court interpreter laws. Many states still have inadequate provisions for interpreters for hearing-impaired persons in their court rooms. HR 10228 will provide an incentive to those states to pass comprehensive interpreter laws.

The Senate has already passed this identical Bill. The Justice Department has indicated to the Judiciary Committee its support of HR 10228. We urge this Committee to pass favorably on HR 10228.

More than half century ago an appellate court of Alabama observed:

"In the absence of an interpreter it would be a physical impossibility for the accused, a [deaf person], to know or to understand the nature and cause of the accusation against him, and, as here, he could only stand by helplessly, take his medicine, or whatever may be coming to him, without knowing or understanding, and all this in the teeth of the mandatory constitutional rights which apply to an unfortunate afflicted [deaf person], just as it does to every person accused of a violation of the criminal law." *Terry* v. *State*, 105 So. 386 (1925).

The denial of interpreter services in our courts still exists today. This Committee now has an opportunity to make federal courts accessable to all our citizens in actions initiated by the United States.

AFFIDAVIT

I, Alfred Sonnenstrahl, hereby affirm and swear that the following statement is true.

I am profoundly deaf and use Sign Language as my principle means of communication.

In 1975, the United States Internal Revenue Service audited my federal tax return, and concluded that I owed backtaxes. I was provided no sign language interpreter during this audit.

In 1976 and 1977, I appealed this decision to the IRS Board of Appeals and the IRS Appellate Division. I requested, and was denied, interpreter services during both of these appeals. The case was closed at both levels. It is my opinion that lack

of communication during these appeals, due to the absence of a sign language interpreter, was the reason my case was closed at these levels.

In the fall of 1977, I petitioned the U.S. Tax Court in Boston, Massachusetts to review my case. I was informed by the Tax Court that I could not move the Court for a court-provided interpreter by any means short of making an appearance before the Court on the date set for trial. The Court would appoint an interpreter at that time, I was told, only if the judge felt that an interpreter was necessary.

This policy was unacceptable to me, for I did not feel that I could successfully request the Court to provide an interpreter without the aid of an interpreter. Therefore, I petitioned the judge through letter for a court-provided interpreter, which I would need, I explained, for any appearance before the Court.

Eventually, I received a letter from the Court stating that a qualified interpreter would be provided for me. My hearing before the U.S. Tax Court was held in the spring of 1978 in St. Paul, Minnesota, where I had moved during the winter of 1977. I was very satisfied with the qualifications of the court-provided interpreter and with the efforts and fairness of the judge.

ALFRED SONNENSTRAHL.

Subscribed and sworn to before me this 7th day of July, 1978.

JOYCE S. PECK,
Notary Public, NY.

My commission expires March 30, 1979.

AFFIDAVIT

I, Diana Gail Shisk, hereby affirm and swear that the following statement is true:

I am employed as a staff attorney at the National Center for Law and the Deaf. On July 13, 1978, I represented Donald Hinkley in the U.S. District Court in Hyattsville, Maryland, on case number P344157. Mr. Hinkley was charged with speeding and wished to put on a defense. Mr. Hinkley is deaf, and his primary means of communication is Sign Language.

Mr. Hinkley came into our office on June 7, 1978 seeking representation. He informed me that he had gone to the U.S. District Court alone on May 25, 1978, and that the case had been postponed until he could come back with an interpreter. On or about June 23, 1978, I telephoned the court and notified them that I would be representing Mr. Hinkley and requested that a sign language interpreter be appointed for Mr. Hinkley. My request was denied. On June 29, 1978 I wrote the court and again requested the appointment of a sign language interpreter (see attached letter). On approximately July 6, 1978, the clerk phoned and again denied my request.

On July 13, 1978, Marc Charmatz, of the National Association of the Deaf Legal Defense Fund, myself, the U.S. Attorney and Judge Burgess conferred in chambers at length on the subject of his appointing a sign language interpreter. At this time I made a formal request for a sign language interpreter and Judge Burgess denied my motion. In open court, the Magistrate acknowledged that he had received a timely and properly filed motion requesting that he appoint a qualified sign language interpreter for Mr. Hinkley, and that he had denied the motion. The Magistrate then proceeded to explain why he was denying the motion. The following is my best recollection of the content of his statement.

He stated that he was denying the interpreter because he honestly believed that deaf people from Gallaudet by means of lip reading are perfectly capable of functioning without sign language interpreters and have overcome their own handicap beautifully. He had asked me previously if Mr. Hinkley was a Gallaudet student and I answered "no". He said he could not see spending money to pay for an interpreter in a traffic case. He was willing to have an interpreter present, but he would not appoint one. I told the Magistrate that Mr. Hinkley's primary means of communication was in sign language; that I had tried to communicate with him without using sign language and that I was convinced that he could not understand what was being spoken by means of lip reading. The Magistrate acknowledged that Marc Charmatz and I had previously spoken with him about the fact that we could not even advise Mr. Hinkley to plead guilty to the offense because he would not be able to understand the court's explanation of his rights and what effect a guilty plea would have for him. He stated that he respected our desire to fully serve our client, but that he would not appoint an interpreter.

At this point the Magistrate asked Mr. Hinkley orally if he understood what was being said. The Magistrate looked at Mr. Hinkley and spoke clearly, but Mr.

Hinkley indicated that he could not understand what was being said. The Magistrate then stated that he was unwilling to proceed in writing because the process was too lengthy, and that he would have the case reset before a federal district court judge in Baltimore. Finally the Magistrate stated that he questioned whether a person should be licensed to drive if he was unable to communicate without a sign language interpreter.

DIANA GAIL SHISK.

Signed and sworn to before me this 26th day of July, 1978.

_____ _____,
Notary Public.

My commission expires Feb. 29, 19 .

[From the Washington Star, Aug. 26, 1976]

COURT STRIKES SUBPOENA OF INTERPRETER FOR DEAF

(By Mary Margaret Green, Staff Writer)

In a major ruling for the deaf, an Anne Arundel Circuit Court judge has ruled that an interpreter for the deaf cannot be ordered to disclose statements that a deaf mute suspect made to his attorney.

Judge Matthew S. Evans yesterday quashed a subpoena ordering interpreter Claire Gibson of Fallston to appear before a county grand jury in connection with a murder investigation in which a deaf mute, David A. Barker, was the only suspect. Evans also permanently enjoined the county state's attorney from subpoenaing Mrs. Gibson.

Sy Dubow, legal director of the National Center for Law and the Deaf of Gallaudet College for the Deaf, hailed the decision as "a significant precedent" which "extends the privilege not only for the interpreter but also the parents and close relatives to assist the counselor" of a deaf mute.

Much of the court debate over the subpoena centered on the fact that Barker's mother and brother were present along with Mrs. Gibson when Barker met with defense attorney Joseph Touhey.

Assistant State's Atty. Frank R. Weathersbee argued that their presence automatically voided the confidential attorney-client relationship, but Touhey countered that this was not so, because of the closeness of the blood relationship involved.

In his order, Evans indicated that close relatives may be included when their presence "facilitates a fuller understanding for the counsel," according to Dubow.

State's Atty. Warren B. Duckett said yesterday that Barker's mother and brother "told members of my staff what the deaf mute said (to Touhey) in sign language and we had good reason to believe a statement of an inculpatory nature had been made."

Testimony from the relatives, "who obviously did not want to inculpate" Baker, would have been challenged as hearsay in court, Duckett said, because they only heard Barker's comments through the interpreter.

Meanwhile, Mrs. Gibson, who risked a contempt of court citation and possible jail sentence rather than appear before the grand jury, said yesterday that she "spent several sleepness nights" when the issue first arose, "but the more people I talked to the more I felt the decision would be in my favor.

"Friends and acquaintances, when they heard the way I felt, agreed with me that I was merely the voice and the ears of the person I was interpreting for," she said, adding that in more than 28 years of court-related interpreting, "I was never asked to divulge information before. It just never occurred to me that anyone would think to do it."

Dubrow added that the ruling "reaffirms the crucial point that an attorney cannot provide adequate assistance without benefit of an interpreter and that any communication between a deaf defendant and his lawyer is protected.

"I think it will encourage interpreters to stand up for their privilege" while granting reassurance to deaf defendants.

He said that he did not know of any other interpretation case directly involving the deaf, although there have been cases involving foreign language interpretation. His office filed a court brief supporting Mrs. Gibson's position.

Duckett said yesterday that because of the informal statements made by Barker's mother and brother, "we felt we had evidence" that would provide them with a

credible case against Barker. "This was a substantial issue and we felt we had an obligation to raise it," he said.

"Under normal circumstances, if a case is discussed in the presence of a third person, that would break the claim of an attorney-client relationship. We were pleased to have the opportunity to participate in research on this rather unique legal question."

The case against Barker, who had been charged on a police warrant, was dropped when the confidentiality issue arose, Duckett said, "because we knew it would take a long time to resolve."

If Mrs. Gibson's subpoena had been upheld, Duckett said, Barker could have been recharged for the murder of a Baltimore barmaid since he had never stood trial and therefore could not claim "double jeopardy."

[From the Washington Post, Sept. 1, 1976]

THE LAWYER-CLIENT PRIVILEGE

There should be no quarrel with the decision of Anne Arundel County Judge Matthew S. Evans extending the lawyer-client privilege to cover an interpreter who was needed to make possible communication between the two. Judge Evans recently ruled in a case involving a deaf mute suspect in a murder case, whose conference with his lawyer was attended by his mother and brother as well as interpreter. The judge indicated that although the presence of other people usually voids the confidentiality of client-lawyer statements, this is not so when that presence makes communication more meaningful.

We don't see how any conscientious judge could have ruled otherwise and we are somewhat surprised that the issue even arose. The purpose of the lawyer-client privilege in criminal cases is to permit a suspect to tell all to the person who will advise him on what to do without fear that what he tells will be used to convict him. Surely that privilege must extend to those other than lawyers whose services are essential to make that consultation free and open.

There is no doubt that from time to time this privilege makes more difficult the prosecution of some criminal cases. It apparently has in this case since State's Attorney Warren B. Duckett seemed to regard as critical the interpreter's testimony, which he sought to compel before a grand jury. If so, that is unfortunate but it is the direct result of decisions made in this country a long time ago to give suspects the assistance of counsel in their defense—and not to allow government to convict them on statements made in confidence to that counsel.

Mr. DUBOW. Thank you Mr. Chairman and Mr. McClory.

My name is Sy DuBow and I am the legal director of the National Center for Law and the Deaf (NCLD). NCLD is a program of Gallaudet College, the world's only liberal arts college for hearing-impaired students. Our purpose is to provide legal services and representation for the 13.4 million hearing-impaired citizens of the United States.

I am testifying in support of the Bilingual, Hearing and Speech Impaired Court Interpreter Act, H.R. 10228, which would provide qualified interpreters for deaf persons in Federal court proceedings initiated by the U.S. Government.

I. THE NEED FOR SIGN LANGUAGE INTERPRETERS IN FEDERAL COURT PROCEEDINGS.

Communication barriers imposed by hearing impairment face over 13.4 million citizens of the United States. Of those hearing-impaired citizens, 1.7 million are completely deaf and are therefore totally unable to hear or comprehend speech. Basic considerations of fairness, on which our system of justice is based, require that when these citizens are brought into Federal court they be provided the assistance needed to insure meaningful participation in the judicial proceedings.

Federal judges are not presently required by statute to appoint interpreters in any situation. That they are reluctant to use the discretionary powers granted to them has been documented numerous times, and is illustrated by the attached affidavits.

Today with me is a prime example, Mr. Gary Hinkley, one of our clients who was denied interpreter services in the U.S. District Court of Maryland.

At this time I would like to introduce Mr. Hinkley so he can explain what happened to him.

[Mr. Hinkley's statement was interpreted into spoken English by Ms. Sioude.]

Mr. HINKLEY. My name is Gary Hinkley. I live at 5024 Townsend Way, Bladensburg, Md.

Going on the Baltimore-Washington Parkway, the police stopped me for speeding. I was ticketed. I did not pay the ticket and I went to court.

I asked the clerk—I did not know what to do in court, and I asked the clerk did they want to continue the case? The clerk asked me, "Did you bring an interpreter or lawyer?" I said, "I have a letter for the judge, requesting an interpreter" but she said, "You must bring a lawyer or an interpreter." I did not know what to do.

Then the clerk asked the police who stopped me and met me and he read my letter. The police said, "70 miles per hour is 2 points and $20," something like that. Then it was changed to 64 miles per hour at one point and a $10 fine if you plead guilty.

I said, "I want to continue the case." The clerk said, "If you want to postpone the date, you bring a lawyer or interpreter." I said, "OK."

So I went to the National Center for Law and the Deaf and saw a lawyer and brought two lawyers with me to court on July 25. We talked some more. They asked me if we continued the case and I said yes. They asked "Do you have any interpreter." I said, "No." Then the lawyer was talking back and forth. Then the lawyer went to see the judge to ask for an interpreter. They said, "Sorry, the judge will not appoint an interpreter." I was stuck with it. I could not understand what the judge was saying.

We came back and the lawyer asked if I would like to continue the case, and I said, "Yes, if I have an interpreter." The judge asked me a few questions and was speaking to me. I said, "I cannot hear anything. You are talking; I cannot understand you."

The judge just looked at me and closed the case.

We went to a higher court and then I left and went home.

Mr. DUBOW. Mr. Chairman, Mr. Hinkley's case is not isolated, but it clearly shows he needed the assistance of a qualified interpreter, and when the judge was speaking directly to him he could not understand what the judge was asking him. The judge was asking, "Do you understand me?"

Because of his inability to lipread he depends on a sign language interpreter.

We have an affidavit from a gentleman in Boston, Mr. Sonnenstrahl. He had trouble obtaining an interpreter in U.S. Tax Court. He was told by the court to bring his own interpreter. The deaf person, Mr. Sonnenstrahl, a well-educated deaf person, told the court he would not appear until the court appointed an interpreter,

and it was his perseverance through letter-writing that finally resulted in the court appointing an interpreter. Many less persistent deaf people would have accepted the initial failure of the Tax Court to provide an interpreter. H.R. 10228 would insure that all deaf people in this situation are provided a qualified interpreter from the onset of court proceedings without necessitating their fighting for this right.

Qualified interpreters are an indispensable communication bridge between deaf and hearing people. Other methods of communication for deaf persons, such as lipreading or the exchange of written notes, are inaccurate and inefficient, especially in courtroom situations.

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> In fact even the best speechreaders in a 1-to-1 situation were found to understand only 26 percent of what was said [and] [m]any bright deaf individuals grasp less than 5 percent.

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Real comprehension of written material often depends upon incidental learning which comes about through day-to-day experiences such as conversations, radio, and television. Since hearing-impaired citizens are disadvantaged in obtaining this incidental learning, they may not fully comprehend the import of words. According to a survey of hearing-impaired children, only 25 percent of the 16-, 17- and 18-year-olds would be able to adequately understand a newspaper and at best, only 50 percent of the 19-year-old students would be able to do so.

The extensive use of idioms in the English language poses significant reading problems for deaf people. As a result of their low comprehension level of idiomatic expressions deaf persons have difficulty in understanding legal documents. For example, the expression "under arrest" in the Miranda warnings would be puzzling to many deaf people since under to them means beneath.

The difficulties many deaf persons have in understanding spoken and written English therefore preclude their use of lipreading or

written messages as adequate means of communication. The most efficient and accurate method of communication between the hearing and hearing-impaired communities is the use of qualified sign language interpreters.

Most deaf and many hearing-impaired persons use sign language as their primary mode of communication. Sign language is an indisputedly quicker means of transmitting ideas to and from a deaf person than is writing or lipreading. It is also a more accurate and descriptive language for those deaf people who are not fluent in written or spoken English.

In criminal cases involving an indigent person, court provision of interpreters has been held required by the fifth and sixth amendments to the U.S. Constitution. (See *United States ex rel. Negron* v. *State of New York* 310 F. Supp. 1304 (E.D.N.Y. 1970), aff'd. 434 F. 2d 386 (2d Cir. 1970).) This constitutional mandate logically should extend to provision of an interpreter upon arrest, so that the deaf person is able to comprehend fully his Miranda rights. It should also encompass the provision of an interpreter during all pretrial proceedings, and during all communication between the accused and his attorney, to insure the hearing-impaired defendant the effective representation the sixth amendment to the Constitution has been held to guarantee.

In addition to recognizing the constitutional necessity of an interpreter in criminal proceedings involving an indigent accused, H.R. 10228 wisely provides for interpreters for all defendants and witnesses needing such assistance, in any criminal or civil proceeding initiated by the United States. As the Senate report noted:

> The committee considers the role played by the interpreter to be so basic that it should be part of the service offered to citizens as a cost of maintenance of the courts, and not as a cost of litigation.

The cost to the U.S. Government to provide interpreters will be minimal. The Administrative Office of the U.S. Courts estimated that the initial cost of implementing S. 819, the original bill to provide interpreters for deaf persons in all Federal court proceedings, would be only $260,000. The modifications made in S. 819 when it was incorporated into S. 1315, that is, limiting coverage to actions initiated by the U.S. Government, lowers the cost estimate for this identical House legislation.

Such Federal legislation will serve as a model for enactment of State laws to correct the frequent miscarriages of justice in State and local courts due to the use of unqualified and biased interpreters or not appointing any interpreter at all.

In a rape case in Virginia involving a deaf female victim, a judge at the preliminary hearing appointed an interpreter who was not skilled at reading the signs of a deaf person. When the prosecutor asked the deaf victim what happened, she made the sign for forced intercourse. The interpreter, however, told the court that the deaf victim said they made love. Not only are these two signs radically different, but so are the legal implications in a rape case where force is the essential element. The victim was also asked what she was wearing. When she signed "blouse," the interpreter said "short blouse," which tended to put the victim in a promiscuous light. At the jury level, the National Center for Law and the Deaf found a

qualified interpreter who, after a pretrial orientation with the deaf person, was readily able to understand the victim's signs.

The National Center for Law and the Deaf has also been apprised of many other courtroom situations in which interpreters censored information, had conflicts of interest, or were basically incompetent. For example, we know of lower courts appointing policemen who only know fingerspelling to be court interpreters. H.R. 10228 would go far to remedy many of these problems. For example, section 1827(b) established a duty on the Director of the Administrative Office of the Courts to prescribe and certify the qualifications of persons who may serve as certified interpreters in the Federal courts. This section also requires the director to maintain a current list of such interpreters.

According to the Senate committee report, for the certification of sign language interpreters, the director must consult with the National Registry of Interpreters (RID), State chapters of the RID, the National Association of the Deaf and State associations of the deaf. We urge this committee to endorse the Senate committee report in this respect. Dr. Kirchner will describe for you the National Registry for the Deaf and how they certify interpreters.

The acquisition of an interpreter certified by RID or approved by the NAD or State associations of the deaf will help to remedy the current problems of misconduct and incompetency outlined above. Moreover, this bill requires the court to dismiss an interpreter who is unable to communicate with the hearing-impaired person. See section 1827(e)(3). The Senate committee report on S. 1319 also recognized that interpreters are protected by the attorney-client privilege and cannot be compelled to testify about communications made during the lawyer-client relationship. Instances of interpreters being compelled to testify do happen. Two years ago in Maryland, an interpreter was subpenaed to testify before a grand jury about the conversations between a deaf person charged with murder and his attorney with relatives present. The interpreter refused to testify on the grounds of privilege and faced the threat of jail. We are enclosing for the record a newspaper account of that case. We urge this committee to endorse the Senate committee report language on this vital area of confidentiality.

It is also important to note that H.R. 10228 can be used not only to benefit the many hearing-impaired citizens who use sign language as their means of communication, but also hearing-impaired people who do not know sign language but have been trained in lipreading/speechreading. In a courtroom situation, where the distance between people can be great and there are many people talking, an oral interpreter can be an important tool to help the lipreader. The oral interpreter repeats every word spoken silently, so that the hearing-impaired person sitting next to him can lipread.

At present there exists no standardized means by which the court can quickly secure a qualified, certified sign language interpreter for deaf litigants or witnesses. Section 1827( ) of this bill authorized the director of the Administrative Office of the Courts to maintain a master list of court-certified interpreters, so that the interpreters will be readily found and those employed will always be sufficiently skilled.

As we said earlier, H.R. 10228 has the additional advantage of providing a model for States to look to when promulgating their own court interpreter laws. Many States still have inadequate provisions for interpreters for hearing-impaired persons in their courtrooms. H.R. 10228 will provide an incentive to those States to pass comprehensive interpreter laws.

The Senate has already passed this identical bill in November. The Justice Department has indicated to the Judiciary Committee its support of H.R. 10228. We urge this subcommittee to pass favorably on H.R. 10228.

More than a half century ago an appellate court of Alabama observed:

> In the absence of an interpreter it would be a physical impossibility for the accused, a [deaf person], to know or to understand the nature and cause of the accusation against him, and, as here, he could only stand by helplessly, take his medicine, or whatever may be coming to him, without knowing or understanding, and all this in the teeth of the mandatory constitutional rights which apply to an unfortunate afflicted [deaf person], just as it does to every person accused of a violation of the criminal law." *Terry* v. *State,* 105 So. 386 (1925).

The denial of interpreter services in our courts still exists today. This committee now has an opportunity to make Federal courts accessible to all our citizens in actions initiated by the United States.

Mr. EDWARDS. Thank you. You have a very sympathetic group of people in this committee who are anxious to move the legislation.

We welcome Ms. Irene Sioude, who is also a certified interpreter for the deaf, for coming today and being of such great help to us.

Since a vote on the floor of the House is taking place now, we will recess for 10 minutes.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order. We will now hear from Dr. Carl Kirchner, immediate past president, Registry of Interpreters for the Deaf, Inc.

Without objection, Dr. Kirchner's statement will be made a part of the record. We welcome you and you may proceed.

TESTIMONY OF DR. KIRCHNER

Dr. KIRCHNER. Mr. Chairman, I want to extend my sincerest thanks to you and the members of the subcommittee for the opportunity to address an issue that needs the attention and action of our legislators—qualified interpreters in the Federal courts, in order to guarantee "liberty and justice" to the bilingual and hearing- and speech-impaired citizens of our Nation.

[The information follows:]

STATEMENT BY CARL J. KIRCHNER, IMMEDIATE PAST PRESIDENT, REGISTRY OF INTERPRETERS FOR THE DEAF, INC.

Mr. Chairman, I want to extend my sincerest thanks to you and the members of the Subcommittee for the opportunity to address an issue that needs the attention and action of our legislators—qualified interpreters in the federal courts in order to guarantee "liberty and justice" to the bilingual and hearing and speech impaired citizens of our nation.

I am Carl Kirchner, the immediate past president of the Registry of Interpreters for the Deaf, Inc. and a son of deaf parents. Since I was seven months of age I have had to handle a bilingual communicate mode, Sign Language and English, in order to effectively communicate information between my parents and me, my parents

and relatives, my parents and friends, my parents and service agencies, and my parents and John Q. Public. I found myself, as all interpreters do, bridging a communication gap. Bridging this communication gap does not imply that the hearing impaired are intellectually inferior[1] but does point out that English Syntax and structure for a person who has a hearing impairment can be difficult to manage in the spoken, read, lipread and auditory modalities since the aquisition and expression of English is based on auditory impression. Thus the critical need for a certified manual interpreter who can function proficiently in manual interpreting either into or from the language of signs or an oral interpreter who can accurately choose English words with high visibility in order to transmit the message to the hearing impaired individual. In addition, the manual or oral interpreter must understand the speech production of the hearing impaired individual so that anyone unfamiliar with speech of the hearing impaired would be given the precise message. Thus the need for the existence of the Registry of Interpreters for the Deaf and the services provided.

THE REGISTRY OF INTERPRETERS FOR THE DEAF

The Registry of Interpreters for the Deaf, Inc. was established in 1964 in order to serve as a vehicle not only to bring together and identify interpreters for the hearing impaired but also provide a means for beginning a process of upgrading the skills of the interpreters so that the hearing imparied of our nation would be guaranteed precision in the transmission of information. Currently, the Registry of Interpreters for the Deaf membership stands at 3,847, of this number 2,025 hold some type of certification within the Registry. There are 60 chapters in 46 states and the District of Columbia. The organization has quintupled its membership since 1972 and tripled the number of chapters since that time. The organization has a Code of Ethics that the members adhere to and enforce. I am quoting five sections of the Registry of Interpreters for the Deaf Code of Ethics which helps put into perspective the role of the interpreter. These sections are—

Shall keep all interpreted and assignment-related information strictly confidential.

Shall render a faithful interpretation, always conveying the content and spirit of the speaker, using a communication mode most readily understood by the persons for whom they are interpreting.

Shall not counsel, advise, or interject personal opinions.

Shall use discretion in accepting assignments with regard to skills, setting, and the persons requesting the service.

Shall continue to develop his interpreting skills and keep abreast of developments in the field.

In order to truly serve hearing impaired individuals and service agencies, the Registry of Interpreters for the Deaf had to establish and evaluation procedure which would assess the skills of the interpreter in expressive and receptive communication modes. The evaluation establishes minimum standards of performance for Certifications awarded but does not qualify the interpreter beyond the minimum standard, e.g. good, better, best. The evaluation procedure is vital since using sign language as a conversation mode is very different from using it in an interpreting mode. Many people who have taken a sign language class or classes often pass themselves off as interpreters which leave the hearing impaired individual with an "interpreter" high in humanitarian consciousness but low in the skills needed to perform the service at a skilled level acceptable to the hearing and hearing impaired consumers. Thus the emergence of the professional interpreter whose skills are validated through objective evaluations.

THE REGISTRY OF INTERPRETERS FOR THE DEAF CERTIFICATION PROGRAM

The National Certification Program was established to identify highly qualified interpreters so that hearing and hearing impaired individuals and agencies can be assured of the best interpreting services possible.

The RID awards one or more of five certificates to interpreters who attain passing scores on each section of the certification examination. Thus, the certification indicates that a person has met minimal standards in interpreting skills and does not attempt to qualify the skills beyond the minimal competency level. (See Appendix A.)

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[1] Mindel, Eugene D. and McCay, Vernon, "They Grown in Silence," Silver Spring, National Association of the Deaf, 1971.

CERTIFICATION EXAMINATION—GENERAL

Certification awarded	Interview	Expressive		Reverse		Overall performance
		Interpreting	Translating	Interpreting	Translating	
ETC	X	X		X		X
EIC	X		X		X	X
CSC	X	X	X	X	X	X
RSC	X			X	X	X

Note.—Evaluation is given in the skill areas identified by an X.

CERTIFICATION EXAMINATION—SPECIALIST

Certification Award	Interview	Legal terms	Signed vocabulary	Interpreting and translating		Overall performance
				Expressive	Reverse	
LSC	X	X	X	X	X	X

Note.—Evaluation is given in the skill areas identified by an X.

Certifications issued

ETC.—Expressive Translating Certification: Ability of the interpreter to simultaneously translate from spoken to manual English (verbatim). The interpreter possesses very basic reverse translating competencies.

EIC.—Expressive Interpreting Certification: Ability of the interpreter to use Sign Language with hearing-impaired persons who possess various levels of language competencies. The interpreter also has basic reverse interpreting competencies.

CSC.—Comprehensive Skills Certification: Includes proficiency in:

Expressive translating—(ability to simultaneously translate from spoken to manual English—verbatim.)

Expressive interpreting—(ability to use sign language with hearing-impaired persons who possess various levels of language competence.)

Reverse skills—(ability to render—manually, orally, or written—a hearing-impaired person's message.)

RSC.—Reverse Skills Certification: Ability to render (manually, orally, or written) a hearing-impaired person's message.

LSC.—Legal Specialist Certification: Includes Comprehensive Skills plus specialized evaluation to qualify for interpreting in a variety of legal settings. This legal certification is based on the premise that Comprehensive Skills Certification has been awarded and that the interpreting skills competencies are maintained.

Evaluations for certification are held at the local level by an authorized Evaluation Team which represents the National Certification Board. Most RID Chapters have an Evaluation Team and schedule evaluations from time to time throughtout the year. The Evaluation Team does not score or certify but provides the National Certification Board with the necessary information upon which to issue a certificate.

The certification is good for 5 years as long as the interpreter keeps his/her membership current or pays an annual certification revalidation fee.

Provisional permits issued

In order to meet the demand for certified interpreters, the RID, Inc. issues Provisional Permits to interpreters who have a knowledge of sign language and beginning interpreting skills. The holder of the permit serves an apprenticeship (one year or less) prior to applying for certification. The skill competencies of an individual applying for the Provisional Permit are verified either by two certified interpreters or by the Director/Instructor of an established interpreter training program.

Provisional Permit—(Experience in General Interpreting).

Legal Provisional Permit—(Experience in Legal Interpreting).

In addition to the Certifications currently issued, the Oral and Educational Specialist Certification program will be developed this fall and certification implemented early in 1979. The Registry of Interpreters for the Deaf projects five additional specialist certifications to be developed and implemented within the next two years.

Hearing impaired individuals are no different from hearing individuals and so find themselves in need of services and their human rights protected as well as having the rights of others protected. However, because of the communication handicap, the hearing impaired individual finds it extremely difficult at times to secure needed services. It is noted by interpreters the lack of understanding by the legal profession about deafness which often results in:

Lawyer/client interaction bog down resulting in no services to the hearing impaired client.

Judicial proceedings at the local and state level which may get shortcircuited, bogged down or dismissed because of the communication problems and lack of deaf awareness.

Litigation which may never reach the federal level because of lack of understanding of deafness and use of interpreting services. In a sampling of 25 certified interpreters from various parts of the nation, they functioned in federal court 96 times in the last 5 years in a variety of cases.

The professional interpreter

Over the years the interpreting responsibilities which were once assumed by religious workers, educators of the hearing impaired and children of hearing impaired parents has now been shifted. This shift occurred due to the hearing impaired individuals demanding equal services and their rights as citizens when needed and not at the convenience of the interpreter whose primary job was other than interpreting. As interpreters became more and more in demand, an assessment had to be made as to whether interpreters for the hearing impaired were amateurs or professionals. (See Appendix B.) Appendix B was a speech delivered in 1969 for an interpreter workshop and subsequently published in a proceedings.[3] All the strategies and recommendations for professionalism have been implemented by the Registry of Interpreters for the Deaf, Inc.

The professional certified interpreter—

Understands what the communication barrier creates for the hearing and hearing impaired consumer and is able to assist in tearing down the barrier.

Knows the limitations of lipreading and English Grammar.

Knows how to deal accurately with the expressive and receptive communication modes of the hearing impaired individual.

Maintains confidentiality

Provides a service to the hearing and hearing impaired consumers.

The Registry of Interpreters for the Deaf, Inc. is a service organization as well as a profession requiring specialized knowledge and skill which is gained through long intensive preparation. It requires a knowledge of the underlying history, rationale and principles as well as the application of the skills. We are working constantly to keep standards high and to educate the members of the profession to maintain their knowledge and skill. As evidence of the continual effort to maintain professionalism we therefore attach as Appendix C to this testimony, a copy of the Registry of Interpreters for the Deaf regional directory of certified members in your area.

Based on the need to provide equality of services to the hearing impaired people, we urge you to take affirmative action on HR 10228.

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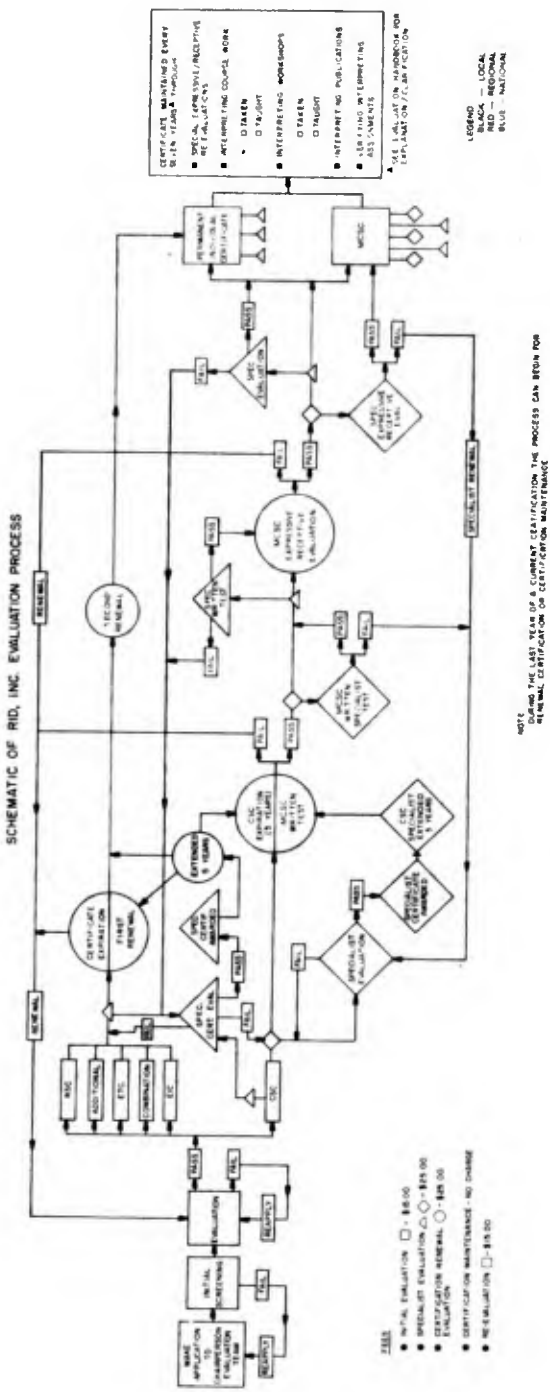
[3] Kirchner, Carl J., editor, "Professional or Amateur," Los Angeles, Southern Registry of Interpreters for the Deaf, 1969.

Appendix A


SCHEMATIC OF RID, INC. EVALUATION PROCESS
CERTIFICATE MAINTAINED EVERY SIXTH YEAR THROUGH
SPECIAL CERTIFICATE/RECERTIFICATE EVALUATIONS
ATTENDING COURSE WORK
TAKEN
TAUGHT
INTERPRETING WORKSHOPS
TAKEN
TAUGHT
INTERPRETING PUBLICATIONS
CERTIFIED INTERPRETING ASSIGNMENTS
SEE EVALUATION HANDBOOK FOR EXPLANATION OF CLASSIFICATION
LEGEND
BLACK — LOCAL
RED — REGIONAL
BLUE — NATIONAL
FEES
INITIAL EVALUATION □ - $ 0.00
SPECIALIST EVALUATION △, ○ - $25.00
CERTIFICATION RENEWAL ○ - $25.00 EVALUATION
CERTIFICATION MAINTENANCE - NO CHARGE
RE-EVALUATION □ - $5.00
NOTE
DURING THE LAST YEAR OF A CURRENT CERTIFICATION THE PROCESS CAN BEGIN FOR RENEWAL CERTIFICATION OR CERTIFICATION MAINTENANCE

Appendix B

Amateur or Professional, W. Lloyd Johns, Ph. D., Assistant to the Dean, School of Education, San Fernando Valley State College

Amateur or Professional. Before this decade, we would probably not have had the opportunity to meet in such a workshop, and seriously consider whether interpreting for deaf persons could be recognized as a professional specialty. Or if we had such a meeting, not many people would have taken us seriously.

Historically, training for interpreters was virtually nonexistent. But then, the need for professionally trained interpreters was much more limited than today. A new day has dawned for deaf persons, and there is increasing need for professional interpreters.

The two categories presented in the title of this presentation offer enough facets for differentiation on a general plane to occupy our interest and energy for more than the time afforded. And that, even before we consider how the role of the interpreter is to be evaluated.

TERMS DEFINED

Webster defines an "amateur" as (1) a person who does something for the pleasure of it rather than for money; thus non-professional, and (2) a person who does something more or less unskillfully.

The possible confusion becomes immediately evident. A person might be highly skilled and effective in a given act, but identify himself as an amateur because he does not charge for his service. The user of the service interprets the "amateur" designation to mean "more or less unskillful," and a misunderstanding of the quality of the service rendered is a possibility.

If a fee is introduced into this situation, does the consumer now raise his respect of the quality of the performer? Is there truth to the cliche, "People only appreciate what they pay for"? So what does "amateur" really mean?

"Professional", according to Webster denotes (1) a person belonging to one of the professions, or (2) a person who makes some activity not usually followed for gain (such as a sport) the source of his livelihood. And it should be added that a "profession", according to Webster, is a vocation or occupation requiring advanced training in some liberal art of science, and usually involving mental rather than manual work, as teaching, engineering, writing, medicine, law, theology, etc.

More confusion! If a person makes his livelihood in some activity other than accepted, or normally recognized professions, such as golf or "rock and roll music", he might be identified as a professional according to the definition. Does this insure a skillful performance? If not, then what is the meaning of the cliche, "He played it like a pro!"?

Or even if the performer is a member of an accepted profession, is there assurance of a "skillful performance"? So what does "professional" really mean?

From the discussion thus far, it appears that the designation "amateur" or "professional" may have some obscure relation to skill, but according to definition is more directly related to the livelihood of the performer, rather than his skill. The implications of skill are more by connotation than by definition.

PROFESSIONAL REQUIREMENTS

Those persons who are members of professional groups, and indeed, those who rely upon the judgements of professional persons need some assurance that an act is being performed skillfully. Obviously, a designation, or label does not offer much assurance.

However, some degree of assurance and acceptance is generated if the performer is a member of a group which meets characteristics traditionally accepted as professional requirements. Such requirements include: a specific scientific body of knowledge; several years of rigorous training, usually involving some form of field experience; an attitude or value system directed toward upgrading mankind; and a strict license and certification system for practicing members, including a system of screening and eliminating those deemed unfit for service.

Though such professional characteristics of a group do not insure a "skillful performance" on the part of every individual, there is much less risk involved to the consumer when service is rendered by persons who are bona fide members of a professional group. And this is true whether the act is performed by a neurosurgeon, a corporation lawyer, a college professor, or an educational interpreter for the deaf.

What meaning does the discussion so far have for you, as an interpreter for deaf persons? I believe there are several areas of concern worthy of identification here, and possible future action on your part.

AREAS OF CONCERN FOR INTERPRETERS

It seems logical at this point to examine the characteristics of the Interpreters Organization in light of some traditionally accepted criteria of professional organizations.

Scientific body of knowledge.—The limited view of the layman often leads to a classification much too narrow in concept to allow recognition of a scientific body of knowledge for interpreters. This is evident in situations where the term "translator" is used, when in fact a much more sophisticated level of interpretation is desired and needed.

In my opinion, it is the aspect of differentiation between translation and interpretation that provides the basis for considering interpreting for deaf persons to be considered a professional endeavor. Interpreting involves not only the understanding of various levels of literacy among deaf persons and adjusting the communication style accordingly, but also the technical aspects of communication per se.

There is ample evidence to support interpreting as a combination of science, with its unique and complex body of knowledge, and an art, with the non-recurring, environment controlled performance aspects. The serious study of both the practical application and conceptual elements of interpreting for deaf persons could easily become one's life work.

Preparation and training.—It appears that the majority of interpreters are either the children of deaf parents, or come from the ranks of social agencies such as schools or churches. Although both sources can provide interpreters with excellent motivation for service, and practical skill, there is usually minimum attention to the theoretical foundation needed for professional personnel.

I believe interpreters should organize classes and in-service sessions to provide for a sound theoretical base to complement the practical skill already present in many candidates serving in various volunteer roles. There are trends toward some college programs leading to professional degrees, and this could be encouraged. Workshops and conferences for interpreters will assist in this upgrading.

Humanitarian role.—One requisite for professional status in many organizations is the desire of the individual to assist his client, regardless of race, color, creed, or ability to pay. Although most people readiy agree that such a humanitarian attitude is a vital characteristic for an interpreter, the issue is more complex than is immediately evident.

Oftentimes, this human aspect overrides technical ability, and the interpreter "with a big heart and limited skill" does more harm than good for his deaf friends. Since much of the interpreters service is donated, the deaf client seldom complains, even though the performance is minimal. How can we measure the dis-service done to a deaf person in a job interview—doctor's office—lawyer's office—or classroom because of a good-hearted, poorly skilled interpreter?

We should not overlook the human, or inter-personal side of the relationship between the interpreter and deaf clients, but we must be careful to measure this characteristic in its proper perspective.

Certification.—One characteristic of most recognized professions is the ability to recruit, screen, prepare, classify, promote, and exclude its own members.

The work of interpreters, and their conditions of employment need to be clarified, locally and nationally, before much headway can be gained in this area, but the needs here are all related.

How can you recruit a person in, or screen him out until you describe what is expected of him, and tell him what he can expect from you? And after he is selected how can you suggest his preparation, classify his specialities, and promote him in the profession unless you use detailed and published critieria? And in the event, he doesn't perform in an acceptable manner, how can he be excluded so he does not do a dis-service to his clients?

A certificate or license to practice, indicating areas of special training, should be a part of the certification process. This certificate should be based on training and demonstrated skill. Local and national organizations should conduct campaigns to enlist the cooperation of agencies hiring interpreters to hire only certificated interpreters.

There is ample opportunity for the non-certificated, volunteer interpreter to assist in non-critical settings, but there should be some safeguard in the system to insure certificated interpreters, paid a professional salary, in critical or sensitive settings.

Here, in my opinion, is the logical application of "amateur" and "professional" in relation to the interpreter.

The "amateur interpreter" is a ready and willing student. He volunteers his service. He is generally involved in the area of deafness, and derives considerable personal pleasure and increased understanding from his activities. He enjoys being with skilled interpreters and deaf people, and renders a valuable service to both groups.

The "professional interpreter" has served his practical internship, either growing up in a family where interpreting for a deaf person is a way-of-life, or experienced intensive formal training in church or school. To that background he has added a scientific base of communication theory and orientation to the causes and resultant implications of deafness. He may command a professional salary for his services, whether part-time or full-time. He is expected to become involved in professional pursuits, donating time and energy to the development of the field of interpreting as a profession.

STRATEGIES AND RECOMMENDATIONS

Although I have identified some areas of concern, in a rather general way, let me indicate some specific recommendations for your discussion and reaction:

1. There should be local, state, and national organizations, with clearly delineated functions at each level. A generous dues system, based on potential income from interpreting, should provide funds for professional advancement and dissemination of pertinent information.
2. The Code of Ethics should be well publicized and enforced.
3. There should be a nationally recognized, state administered certification system.
4. Areas of specialty should be identified, such as legal, medical, religious, and educational. Directories should indicate special areas, and be made available to agencies hiring interpreters.
5. The professional organization should provide for the rights and dignity of interpreters.
6. A model or suggested training program should be developed and disseminated on a national basis.
7. Since professional organizations are concerned with conditions of work, there should be some provision for negotiating contracts, or major areas of concern, such as: Obligations of interpreters, clients, agency personnel, etc.; duration of agreement; salary, expenses, and allowances; substitutes; special or unique duties; welfare, safety, and protection; grievances and discharge.
8. There should be provision for in-service seminars from the organization, and participation in in-service seminars by interpreters to keep abreast of current trends.
9. Continuous and active liaison should be maintained with organizations serving deaf persons.
10. Interpreters should become actively involved in upgrading and controlling their professional organization for its ultimate service to deaf persons.

SUMMARY

If we use the term "professional interpreter" to suggest that a person performs interpretive services for part of their livelihood, we are accurate according to definition. But if we use the term to identify a group of skilled persons, schooled in theory, trained in practice, and respected as a humanitarian, then the professional design leading to their development must be delineated and enforced.

There are several criteria which traditionally a group of persons is expected to meet before they can be recognized as professionals. These criteria include working in an area of scientific knowledge; careful and rigorous training; a humanitarian function toward mankind; and a certification system controlled by the members. Although meeting these criteria as a group does not insure the skillful performance of each individual, there is considerable less risk involved when using the services of a person selected, prepared, and certificated by a professional organization.

Interpreters should, in my opinion, develop a plan of implementation at the local, state, and national levels (1) to study the recognized characteristics of respected professions, (2) to determine the areas of difference between their respective practices and the recognized characteristics of professions, and (3) in priority fashion move toward accomplishing the changes necessary to meet professional qualifications.

This task is complex and will require a great expenditure of personal effort on the part of many interpreters, but you will be no further along tomorrow if you don't

commit yourself to action today. The deaf members of our communities are depending on you, so "play it like a pro!"

Thank you.

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Dr. KIRCHNER. I would like to highlight five areas of importance:

First of all, the language of signs, as Dr. Garretson has stated, is a language unto itself. It has its own linguistic structure, word syntax, and it provides comprehension—or it provides communication facility for the hearing-impaired person.

It is not English. It is a conceptual language and it takes people who understand it to interpret and translate it.

Mr. EDWARDS. May I interrupt you? I wonder if for the benefit of the subcommittee the interpreter could show us a few words in sign language? It seems to me that no matter how fast you speak, the expert interpreters are able to communicate simultaneously in sign language. I am very impressed by their skill.

Dr. KIRCHNER. For example, when we use in American sign language, "I will go to the store," it would be interpreted in this way, quoting "store"—that is the sign for "store" and the sign for "go." A person understands immediately conceptually "I will go to the store," so this is a syntactical language in itself.

The interpreter, however, is not signing in American sign language right now. He is signing it in pidgin English in order to relay to the hearing-impaired members in the audience my words. So he is translating everything I say using a sign for every word, in essence, so that the English I am using is also English to the audience.

Mr. EDWARDS. What is the symbol for "English"?

[Indicated.]

Dr. KIRCHNER. Dr. Garretson asked me to explain the educational level for the people here is rather high. This also has to be taken into consideration in any type of interpretive position. You have hearing-impaired people with a variety of levels of education, English syntax, grammar and reading skills.

The thing most important in this type concept is the fact because a deaf person has a communication gap, it does not necessarily imply there is an intellectual gap or intellectual inferiority. Many people think because I do not use English I am mentally retarded or I am intellectually deficient. This is not necessarily so. What we are trying to point out with the use of certified interpreters is that the deaf person has cognitive abilities and it is just a matter of understanding the language which is used and expressing it properly in any kind of situation.

So the language of the hearing-impaired person is a key factor. It is a key factor in understanding what the person is saying and transmitting.

The second area I would like to highlight is that the environment plays an important part in any kind of a situation. Without

the proper lighting, without the proper distance or room arrangement deaf people oftentimes find themselves at a disadvantage.

I think of a courtroom situation where the deaf person may be on a witness stand; the judge is speaking behind him and may miss the conversation unless an interpreter is here. It would be difficult for you to see what I am saying because of the distance if I could not speak.

If the lighting is bad you get a glare in the eye and you miss conversation because you are concentrating on squinting to see what is going on.

In a courtroom certified interpreters are important because they understand these problems and they can provide the hearing-impaired person with all the necessary support services to get the communication message.

The third thing equally important are the needs of the deaf person. In doing my own survey in contacting interpreters who have interpreted in the Federal court system, either I found they are oftentimes dismayed because cases do arise but oftentimes get set aside, dismissed or whatever because the lawyer-client interaction bogs down. Oftentimes a lawyer does not know how to communicate with a deaf person, does not know there are interpreters around to bridge the gap, and therefore gets some misinformation and feels it is not a case at all, whereas it is a case but the communication is not sufficient between attorney and the deaf person.

As interpreters are there to clarify with the lawyer their role, the judiciary at every level does not understand the interpreter and feels the interpreter is interfering. Again, by using certified interpreters who understand their role in the situation we hope to avoid any kind of confrontation between lawyer, client, interpreter, so it makes the proceedings in any court, especially at the Federal level, go very strongly.

The next thing of importance is that the skills have to be there. An interpreter must have signing skills, they must have the expressive skills, which is what Bob is doing now, sending my message expressively to the hearing-impaired, and the receptive signing skills which he had when Mr. Garretson gave his testimony and he gave it in spoken form to yourselves and the people on the committee.

This is a very important part of a certified interpreter's role. In order to accurately understand what is being said so there cannot be a misunderstanding by the judiciary in terms of what the client is saying and in terms of anybody in the situation.

We feel that in the interpreter situation there can be a lot of misunderstanding when you have people not certified or who have been in the interpreting profession for a very minimal time. This is no reflection on people who want to be humanitarians and be of help. But sometimes a little bit of knowledge can be a dangerous thing.

We feel very strongly, there are many sign language classes in America today and we applaud them, they are super, but because they have taken a sign-reading class does not enable me to carry out this kind of continuous interpreting kind of skill. This is a different kind of skill which means you have to have a broader

base of vocabulary, a broader base of deftness and expression in terms of linguistic capability. The skills of the interpreter play an important part.

The RID launched a campaign back in 1972 to help consumers. We mean not only the hearing-impaired consumers but also the hearing consumer who has to bridge the communication gap. It is our belief that through quality and qualified professional interpreters we can do this. We set up an examination situation whereby people who wish to be certified by the organization have to go through an hour examination. It consists of an interview which tells us where the person is coming from in terms of attitude, role responsibility, professional ethics. Also, it tells us a little bit about the person's expressive skills. Then the person takes an expressive test much like Mr. Chandler is doing now, whereby a story is given and the interpreter must sign it and translate it in one situation and interpret it in another. We can then see if the person has ability to take verbatim information and take another bit of information and translate it in terms of grammatical syntax. The third part of the test is where we have a film showing hearing-impaired people and the interpreter has to interpret it back.

We have been in existence for 5 years. Three years ago, we got into certified interpretation. We found interpreters wanting to go into court but not being up to par. They were making various kinds of statements which were inaccurate or were so way out of line that either the deaf person's case was dropped or a different kind of case resulted because of a lack of communication. We feel very strongly in any kind of a court situation, especially at the Federal level, we need to supply to the consumer—the judiciary in this situation—and to the hearing-impaired client, the best possible interpreting services. We feel the professionally qualified interpreter, especially those who hold our certificate, because they have gone through a course—and if they are not available, then a certified interpreter—does justice to both the hearing-impaired person and the agency as well.

Finally, in summing up the testimony, we feel the hearing-impaired people need to have their rights and need to be heard. It is very difficult to be heard when you have not heard yourself and try to communicate in a very "poll parrot" kind of way, and oftentimes it becomes a mere facsimile. We feel interpreters can be of help so that even the deaf person with very poor speech or the individual with good speech cannot be misunderstood.

We feel very strongly there need to be sign language interpreters and oral interpreters. You ask what is the difference? In oral, you have to have more visibility in terms of sounds on the lips. The oral interpreter must use a word which has higher visibility in terms of external lip movement because, as we know, many of the sounds are pronounced within the mouth and in the nasal cavity and you do not hear those sounds.

Again, the oral interpreter has to be skilled.

All in all, we feel this legislation will begin to provide qualified interpreters in the Federal court in order to guarantee liberty and justice to the deaf persons of our Nation. So we strongly urge your support of H.R. 10228.

Mr. EDWARDS. We thank you for your testimony.

I will now recognize the ranking minority member, Mr. McClory.

Mr. McCLORY. Thank you, Mr. Chairman.

I have a few questions. For one thing, I am curious to know, if there are an adequate number of qualified interpreters today to serve the needs in Federal courts from the certified list?

Dr. KIRCHNER. At this point there are 2,200 certified interpreters in the United States. What we have done, we have worked very closely with the State of California this past year because of the new State law which requires that an interpreter in the State system must have legal certification in order to interpret. We went with the local interpreting organizations in California and put on some short-term workshops on a weekend and gave what we called provisional interpreting certificates based on the fact the interpreter had one certificate, but we raised their consciousness in terms of court interpreting. We are able to certify at this time 45 people, which brings the total to 65 in the legal area. We can do this rather quickly with our going around the United States and bridging the gap.

We would encourage there be more workshops happening. There is one at California University beginning next week to certify more legal interpreters. I understand 50 persons are signed up to take the course.

Mr. McCLORY. I judge the interpreters who would be interpreting for the benefit of the deaf and those with impaired hearing would be freelance people. They would be on call. They would be paid when they provide a service, and when they are not called as court interpreters, they might be in the field of education or employed elsewhere.

However, I am concerned that this might develop into a new body of public employees with all the implications which are involved as far as a new group of civil servants.

Do you envision this as just the beginning of a program which would grow into that, or do you feel the certification of interpreters and their being subject to call at this rather modest cost and great convenience would nevertheless be a stable, relatively efficient, answer as far as the U.S. courts are concerned?

Dr. KIRCHNER. I feel the interpreters will continue pretty much as they are now, as a group of people who are on call to provide a service. We strongly encourage as an organization, if there is a high demand, that is 4 to 5 hours a day of interpreting service, that an agency go ahead and hire a full-time person because they would be saving money in costs.

But when it is a sporadic situation, maybe today and not again for another 5 days, we as an organization would maintain the same structure we have now. We have a directory, and if the person is available and has the qualifications we will call on them to fulfill the interpreting assignment. That is why I say we need roughly over 10,000 interpreters in the United States—not 10,000 full time, but 10,000 who are on call and are able to go and meet a demand.

Most interpreters do it as a part-time job. Many times they have other kinds of employment. We recognize the fact we could never maintain a family on an interpreter's salary at this point. Many interpreters are often the housewives who do it as a way of making extra financial income.

Mr. McCLORY. We are talking here about interpreters in the Federal courts. You have indicated that they already have a system for interpreters in California. Most of the litigation in which deaf people are involved is of course in State and municipal courts.

What do you envision as a program for interpreters for deaf people in all the other courts?

Dr. KIRCHNER. I guess I would make the same response, in that we would maintain a certified list in every State and the RID chapter or National Association for the Deaf would maintain a directory and call and say we need an interpreter at this time and place.

Mr. McCLORY. You would hope to get State legislation which would be patterned after the Federal legislation?

Dr. KIRCHNER. Most definitely.

Mr. McCLORY. Thank you.

Mr. EDWARDS. Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman. I apologize to the panel for being late, but I do have some questions if I may.

What exactly is the National Association of the Deaf?

Mr. GARRETSON. The National Association of the Deaf as I said awhile ago is the largest consumer organization in this country and maybe in the world of deaf people. We are really a federation of State agencies.

Right now we have 47 States organized. Probably it is a little like the NAACP, National Association for the Advancement of Colored People. This organization has its home office in Silver Spring, Md. We have a staff of about 33 full-time workers and our whole thrust is to improve the lot of deaf people in various areas, economic, social, educational and so forth.

Mr. BUTLER. Thank you.

With reference to deaf persons, as opposed to those who are hearing-impaired, what percentage of both deaf and hearing impaired use the sign language?

Mr. GARRETSON. We do not have actual figures. We know there are about 13½ million hearing-impaired people in this country. By hearing impaired, we mean both deaf and hard-of-hearing.

Of this group of 13½ million, 6 million are bilaterally deaf, which means pretty pronouncedly deaf.

We have about 2 million who have total deafness, and I would say of those 2 million, maybe 90 percent use sign language.

There are many other people who lost their hearing late in life who do not sign and some who are raised in a strict oral situation and depend heavily on lipreading. I do not have the exact percentage, but those who are not fluent in the use of sign language rely on the lipreading or nothing.

Mr. GARRETSON. They rely primarily on lipreading and writing. But with lipreading, it is a one-to-one thing. If they were in a large room such as this they would not be able to lipread. They would have to have an interpreter who could give them a close picture of what is said. You cannot see the lips from where I am sitting.

Mr. BUTLER. How would you draw the line between those who are hearing-impaired to some degree and require an interpreter,

and those who are hearing-impaired but do not require an interpreter?

Mr. GARRETSON. It would have to be a guess, but I feel almost all hearing-impaired people need an interpreter, especially in court situations.

For example, my wife has a 50 decibel hearing loss, which means she is hard of hearing. She can use a telephone, she can talk to people on a 1-to-1 basis, without problems. But in a large room, she has difficulty. When we go to the movies, she misses a lot, and if she were in court where her life or legal rights were in jeopardy, she would never depend on her hearing and lipreading.

Dr. KIRCHNER. I would like to add to that. I would feel very strongly in stating that every hearing-impaired person would need an interpreter in a judicial proceeding because of the fact that spoken English is very difficult to see. It is not visible on the lips and because of all the variables of the person who talks through his teeth, of a person with a mustache or beard, of a person who may be talking and turning their face continually moving from side to side, of a person who may be unconsciously wiping his face while they are talking, and you are missing what is being said. The hearing-impaired person, even if they are oral, needs some kind of visual reinforcement to make sure the words which are being said, they clearly get. If they do not have high visibility for the speech production they are missing a lot. Then they begin to guess.

If you think of the words "mat," "pat," and "bat," they all look alike on the lips, and when you cannot hear the sounds, you cannot tell what is being said, so I would have to guess whether the man was talking about a bat that Pat used to hit someone, for example.

Mr. MCCLORY. Will the gentleman yield? You used a word "polly parrot." What does that mean?

Dr. KIRCHNER. Polly parrot, in terms of——

Mr. MCCLORY. Polly parrot?

Dr. KIRCHNER. Right. Many times for a deaf person it is definition only. They cannot hear the sound and therefore can only observe what you are saying. Therefore, it is a word we use many times. It is a polly parrot situation.

Mr. MCCLORY. Thank you.

Mr. BUTLER. We will still have the problem, it seems to me, when a person is hearing-impaired and an interpreter is necessary. Do you think a hearing-impaired person is qualified to make necessary judgment to waive his rights to an interpreter; or do you think we should make this mandatory?

Mr. DUBOW. I think it is included in the bill that the deaf person must be apprised of his right to an interpreter and the implications of waiving that right must be explained to him clearly.

There will be a problem with some deaf people with very low language skills, but again the deaf person is in the best position to know if he needs an interpreter or not.

I think it will be clear to the court that proceedings cannot go on without the use of a qualified interpreter, but the bill does provide for explaining the waiving of appointment of an interpreter.

Mr. BUTLER. As to the training, how long and how expensive is it to train a person with adequate hearing to be an interpreter?

Dr. KIRCHNER. It depends, and I open with that statement only because, for example, some interpreters grow up being children of deaf parents, so a lot of the training comes from the homes, so there is no cost.

Mr. BUTLER. I am talking about recruiting people who want to make a living in a profession about to open up. How much time would a person have to invest in order to develop a skill that he can market?

Dr. KIRCHNER. We now estimate it would take a year if the person is involved continually. We have sign language classes, but for a person to develop the skills an interpreter has and needs we feel it takes at least a year. We have seen people do it in a year and others 3 or 4 years depending on their interest and skill level they bring to the training.

At this time we do not have an extensive training program. We have the National Interpreter Training Consortium, but this happens because a person gets interested in sign language then feels they would like to become an interpreter and they go and seek out an interpreter training program, begins to develop close contact with the deaf community and develops conversation skills.

I pointed out earlier, we now have the legal training program. We have had four sessions over the past 2 years whereby the interpreters have come for a 2- to 3-week period of time to train and get briefed on all kinds of courtroom procedures. That is a very short-term function, but they get more skill in order to function effectively.

Mr. BUTLER. Thank you.

Mr. EDWARDS. Can you make a case for requiring such interpreters in Federal district courts? Do you have a record of injustices which have been imposed on hearing-impaired people as a result of not having this legislation? Have rights been violated? Has due process been denied? Can you furnish the subcommittee with examples where not having this legislation will result in great hardship?

Mr. DUBOW. We have tried to submit to you two examples, the one of Mr. Hinkley——

Mr. EDWARDS. That was in a Federal district court?

Mr. DUBOW. No, that was in Federal court. It was a criminal charge before a Federal magistrate. The other case was a tax case in Boston. We have those two cases with affidavits.

Mr. EDWARDS. If you could find additional examples in other parts of the country, it would be helpful.

Dr. KIRCHNER. I would like to make the comment, in talking with interpreters in securing this information they state many times the case has not gotten to the Federal level only because of the fact at the lower level there was a misunderstanding between the court and the interpreter's ability to function well.

I think we can find some more, but the difficulty is there are a lot of injustices we will never know about because we are seeking at the Federal level.

Mr. EDWARDS. Information from the State and local levels would be helpful, also.

Ms. Gonzales.

Ms. GONZALES. I have a technical question. The legislation before the subcommittee provides for manual or oral interpreters. An

amendment has been suggested to us by deaf persons and organizations which would change that wording to oral and manual interpreters. The basis for such an amendment is that many individuals are not able to read sign language and we should, therefore, emphasize in the legislation that it will be necessary to provide interpreters not only for deaf individuals who use sign language but also for those deaf persons who instead use lip reading.

Have you any comments regarding such an amendment?

Mr. DuBow. The bill says including bilingual, manual, and oral.

Ms. Gonzales. You think the current language in the legislation is sufficient?

Mr. DuBow. Yes.

Ms. Gonzales. Is the testing, which your organization performs, done on a regional or statewide basis?

Dr. Kirchner. For general testing it is done on a State basis; for the legal, that is on a local basis.

Ms. Gonzales. Is this testing done by people who have already been certified as interpreters?

Dr. Kirchner. Yes, by a panel of five people, two interpreters who have been certified and three deaf people who have been certified. We feel we need the consumer to recognize the skill of the interpreter.

Ms. Gonzales. The legislation right now requires that the interpretation be provided in the consecutive mode. Most of the sign language interpretation provided today seems to be in the simultaneous mode. Are sign language interpretations in judicial proceedings also provided in the simultaneous mode?

Dr. Kirchner. Based on the fact that it is at the level of the deaf person's comprehension in terms of understanding either English or ASL, that has to be addressed, if the deaf person understands more in terms of American Sign Language rather than in a sign English mode you will not be doing consecutive word-for-word translating. You would need to take the ideas and put them in a conceptual frame for the deaf client. This has created some questions oftentimes in the judiciary because the judge will say, "I want it signed exactly as I say it." Then we need the lawyer involved to say, "You have to recognize we are now moving from English to a different language and in this movement you cannot give, for the deaf person to understand, a signed English interpretation."

So it is taking an education in terms of educating not only the interpreters, the deaf consumers, but other consumers to understand this. That is why we all spoke strongly that American Sign Language is a different language.

Ms. Gonzales. I want to assure that the language in the legislation is sufficient in all cases. If I understand your testimony correctly, it is your response that it is sufficient?

Dr. Kirchner. Yes.

Ms. Gonzales. Thank you.

Mr. Edwards. Mr. Starek.

Mr. Starek. I have no questions, Mr. Chairman.

Mr. Edwards. We thank the witnesses for their testimony.

Mr. Edwards. Our next witness is Paulette Harary, the president of the Court Interpreters Association of New York, who will

provide us with some insight based on her years of experience as a translator in Federal court.

We will recess for 10 minutes for a vote in the House and as soon as we get back, you can begin.

[Recess.]

Mr. BUTLER [presiding]. Ms. Harary, Mr. Edwards will be back in a moment. In the meantime, he asked that you proceed with your testimony.

TESTIMONY OF PAULETTE HARARY, PRESIDENT, COURT INTERPRETERS ASSOCIATION OF NEW YORK

Ms. HARARY. Good morning ladies and gentlemen.

I am honored to be called before this Committee on the Judiciary. I am committed to my chosen profession as an interpreter. As such, I welcome this opportunity to testify to my experiences and recommendations before the legislative branch of our Government.

I clearly recognize that it is the intent of the Committee on the Judiciary to find the most satisfactory means by which interpretive services can be provided for the non-English speaking defendant and the deaf before trial courts throughout the United States.

I will address myself to the following items. These items are designed to provide this committee with a comprehensive understanding of the position of the interpreter in trial courts.

One. The way in which I attained my present positions;

Two. Considerations in the specialized field of court interpreting;

Three. Examination and certification of court interpreters. Grandfather clause awarded to those with successful performance;

Four. The role of the courtroom interpreter;

Five. Professional development and in-service training; and

Six. Ongoing supervision and evaluation.

DISCUSSION

Item 1. The way in which I attained my present positions: There are many persons who present themselves as interpreters to the courts. These persons have credentials that range from basic native or acquired language skills to the highly experienced interpreter specializing in courtroom procedure and legal terminology.

The present system of selecting interpreters often involves the expedient or accepting that person who presents himself, speaks the particular foreign language and best meets the immediate needs of the court—interrogation, deposition, debriefing, tape transcribing, attorney-client discussions, et cetera.

As the need arises I appear before the court to interpret either for the court, the jury or a defendant. There are a number of per diem interpreters and court staff that provide interpretive services. After a brief trial period, I am called regularly by the court to provide interpretive services. Usually, because of the lack of experienced interpreters, a handful of interpreters must service the various trial courts' needs. All too often, because qualifying examination or certification does not exist, significant delays attend the proceedings.

Item 2. Consideration in the specialized field of court interpreting: Recognize, if you will, that extensive training and preparation

are mandatory for the interpreter to function in the courtroom. Courtroom procedure and legal terminology must be mastered. The interpreter must practice an honest code of ethical behavior. The interpreter must become a mimic and an actor so as to convey to the court the emotion, mood, and attitude of a defendant or witness, as well as to correctly interpret his responses.

I bring your attention to the sterile, detached simultaneous interpreting as accomplished by the United Nations interpreters. The specific skills inherent in the performance of a court interpreter require different training and experience, along with ongoing supervision and evaluation. I submit that there are presently functioning interpreters who can neither serve the needs of the court, the defense, or the prosecution. I contend that the court interpreter should be a professionally prepared officer who must take responsibility for his work and who must function at the highest levels of competence. It must be equally clear that all too often due to professional staff limitations the court is unable to supervise or fully evaluate the interpreter.

Item 3. Examination and certification: I believe that it is necessary to construct a test instrument that will measure proficiency of language skills, courtroom procedure, terminology, and finally performance. Such an examination will help to certify or qualify personnel to service the variety of courtroom needs. We must also consider as qualified, those experienced and practicing interpreters who have qualified as experts in court. This endorsement must be given freely, without hesitation or reservation. This would grandfather-in eminently successful interpreters. These interpreters would then form the nucleus of a resource pool of qualified and generally available personnel.

Item 4. The role of the courtroom interpreter: It is necessary to understand the base of my experiences and credentials. I confer with associate interpreters in other courthouses throughout the country. I attend professional seminars, lectures, and conferences on a national level. I am currently involved in attempting to incorporate an association of court interpreters in New York State. I subscribe to professional journals and literature. I am consultant to an interpreters' training institute. I am associated with an interpreters' agency for noncourtroom assignments. This then affords me the perspective and styles of operation of courtroom procedure on a national level.

It must be perfectly clear that the interpreter must be considered a professional court officer. He is unbiased and can assume any assigned role in the courtroom. It is necessary to point out that he can represent both the prosecution and the defense.

Item 5. Professional development: Of necessity, I must be a freelance agent providing interpretive services for Federal and State courts. I also accept employment in commercial and industrial fields as an interpreter as opportunities present themselves.

I am involved with a placement agency and training institute. This enables me to endorse personnel that are trained and supervised by me.

I find that ongoing training and development of personnel is necessary. As I work closely with interpreters who I recommend for assignments so too must the court provide for dialog between

all court officers—including interpreters. Mock trials, video self-analysis, clarification of procedures and ongoing inservice training are absolute essentials.

Item 6. Ongoing supervision: There are jurisdictions in our country that are making excellent strides toward supervising the interpreter on the job. At present the interpreter is almost immune to his inability. Most categories of professional jobs carry with them the responsibility of creditable performance. So, too, must the interpreter be accountable to ongoing supervision and evaluation.

The following evaluative criteria are essential with reasonable supervision.

1. Proficiency: (1) Proficiency in interpreting procedures; (2) Interprets without undue interruption; (3) Knowledge of legal terminology and court procedures; (4) Clarity of speech (English and foreign language); (5) Accuracy of interpretation.

General Attitude: (1) Objective in all stages of proceedings; (2) Impartial relationship to witness; (3) Punctuality in attending court; (4) Cooperative with court and court attaches; (5) Ethical conduct code practices; (6) Discreet with public contacts; (7) Client-attorney confidentiality; and (8) Appropriate attire.

Ladies and gentlemen of this Committee on the Judiciary, the need for this bill is now. The need to comprehensively provide for bilingual proceedings can no longer be delayed.

Thank you for inviting me to participate in these proceedings.

I will make myself available for questions or further comment after this hearing.

Have a nice day.

Mr. EDWARDS [presiding]. Thank you very much, Ms. Harary.

Mr. Butler.

Mr. BUTLER. I thank you for your testimony. It is very well-organized and I think quite helpful to us.

Let us get right to the point. We have a person who possesses a degree of foreign language skill which enables him or her to function as an interpreter in a conversational situation outside the environs of the legal proceedings. He wants to become a courtroom interpreter. What is necessary for that person to do so, as far as you know?

Ms. HARARY. There is only one State which offers training for interpreters. That is in Monterey, Calif., Monterey Institute, which offers a master's degree in interpreting. Others have tried other training programs. Court interpreting training is not available. That is one of the reasons I involve myself in trying to start up an Interpreters' Institute in the State of New York.

Mr. BUTLER. Whose responsibility is it in the educational world to take on this job? Is it the bar associations', the law schools', the colleges' themselves? Where do you think this professional training ought to be placed?

Ms. HARARY. Five years ago I began my own research in developing a career opportunity program in court interpreting. To achieve this aim, I would have to develop a graduate curriculum and be prepared to teach in college.

My personal vigor and enthusiasm launched me on the path to investigate and develop a curriculum for colleges. However, I soon realized that the colleges were generally not prepared to deal with

a new scope and sequence curriculum. I would personally rise to the challenge and develop my own language institute. I would therefore be developing a curriculum for my institute with a highly specialized staff and which would be supervised by myself.

We will need a staff of bilingual personnel. Master teachers to teach teachers, people involved in the legal terminology, colloquialisms as well as people who had lived in other countries must comprise the staff.

The mood, inflection, the tone are essential to interpreting.

Mr. BUTLER. So you need a drama consultant?

Ms. HARARY. Yes, speech pathologists—all types of personnel.

Mr. BUTLER. I suppose if this legislation becomes law, the demand will become substantially greater. Do you agree with that?

Ms. HARARY. Yes.

Mr. BUTLER. Where is the well from which we will draw?

Ms. HARARY. I have been in contact with professors at Monterey Institute and the superior court in Los Angeles. We are exchanging information. The California State courts at present have developed a training and testing program for interpreters. We consult with each other so as to improve our professional perspectives. If the courts there can do it, we can do it here.

Mr. BUTLER. Here being the remaining 49 states?

Ms. HARARY. That is right.

Mr. BUTLER. I appreciate the work you have done. It is certainly useful. I am disappointed that some colleges or educational institutions have not risen to this responsibility. It seems to me that we could create problems. When people say they are interpreters, we will have to take their word for it because an immediate determination of competence is simply unavailable. Yet if we are going to start requiring examinations or certification, then we will be able to eliminate some of the unqualified. Perhaps at that threshold time, we will have difficulty replacing them. Assuming you meet your own high standards; you could be working rather hard.

Ms. HARARY. Please allow me to comment on that. I attended a conference in California about a month and a half ago. I met with many representatives from U.S. courts and people involved in training programs, and also representatives from various colleges from around the United States. Many of the colleges have asked to meet with me in devising certain, perhaps, standards for teaching court interpreting in their colleges.

I am involved in dialog with personnel from Montclair State College, N.J. who are also interested in instituting a court interpreters' program. I think many States will take their example. I will be meeting with NYU and other colleges to institute training programs as well as in the courts.

Mr. BUTLER. Thank you.

Mr. EDWARDS. Do you believe that certification is necessary?

Ms. HARARY. Yes; I do.

Mr. EDWARDS. National certification?

Ms. HARARY. Yes; I do.

Mr. EDWARDS. Who would be the certifying agency?

Ms. HARARY. I really do not know how to answer that. I have given this some thought, but not enough. If you would like me to

develop a response, I would be glad to consult with the Government and develop reasonable and workable solutions.

Mr. EDWARDS. Perhaps you can drop us a line. We would appreciate further thought on that issue. We generally do not like national certifications. States are competent to do that kind of work, and it seems to me that a national certification process would be unnecessarily expensive. It also could tend to be very bureaucratic.

How do you prevent this certification process from being used, by those in charge, to make sure that only those individuals who have already been found to be qualified and are currently practicing in the Federal courts are certified?

Ms. HARARY. When you say those who have already been qualified, you mean with the same type of certification, or——

Mr. EDWARDS. Well, as you know doctors have resisted many certifications because they do not want too many individuals in the profession. To some extent other professionals do the same thing. They resist newcomers in order not to increase competition.

Ms. HARARY. The only thoughts I have had along those lines as far as certification is concerned is I thought perhaps there might be some sort of civil service test. There used to be a civil service test in New York. The last one I got hold of was a civil service test dated 1945, but I know there must be some kind of certification which could be given to interpreters on a national level where they would have some credibility as a professional.

Mr. EDWARDS. I might ask Ms. Gonzales, who recently worked with the California legislature, how they handle it there.

Ms. GONZALES. I am not sure how California intends to handle their newly enacted legislation. I believe the State judicial council is currently trying to decide how to certify individuals.

Mr. EDWARDS. I think it would be helpful to find out how California intends to handle its certification procedure.

Ms. HARARY. Since I am involved with public defender, CJA, and all, there is a great need for interpreters, and they are just not there. It has come to a point where it is very visible to all the institutes that the interpreters are just not there.

Mr. EDWARDS. Mr. Starek.

Mr. STAREK. Thank you, Mr. Chairman. If this legislation goes into effect, the need, will greatly increase for interpreters, yet you are concerned about eliminating the unqualified ones. I am curious if you have suggestions as to how we will meet the need for an increased number or interpreters once this bill goes into effect?

Ms. HARARY. Well, if the courts were to go along with the idea—and I am going to meet with a few of the judges in some of the courts where I work now—I am hoping to get some kind of enforcement sheet printed up—we already have it written up—whereby interpreters would get endorsements from judges, drug enforcement agencies, whoever they work with, indicating what their experiences have been, thereby bringing in the grandfather clause I mentioned whereby they will be qualified interpreters, but they will be qualified by judges and others with whom they have worked. They will because of their experience and endorsement have certification.

Mr. STAREK. You work in New York, where there is a great need for language interpretation. Have you encountered situations

where you thought there was a need for an interpreter and the judge denied the request?

Ms. HARARY. I have never seen in the 5 years that I am working in the Federal courts a case where a witness was denied an interpreter. But of course I have seen many cases where the interpreter was totally inadequate and the testimony just went on and on and the interpreters sitting at the defense table did not at all interpret to the defendant.

I had a case where it was just the contrary, in a State court. I was sitting next to the defendant and as the testimony went on and the defense attorney was speaking to the judge, I started to translate, because I feel anything that goes on in the courtroom which anybody understanding English understands the defendant must understand. The court bailiff kept shushing me and finally the judge said, "Miss Harary, please be quiet until I tell you it is all right to speak."

Mr. EDWARDS. Ms. Gonzales.

Ms. GONZALES. First, I want to commend you for the efforts you are making to improve the competence of interpreters serving in the court system.

Would you agree that if a judge is not fluent in the particular language being translated in the courtroom, then that judge is not qualified to say that an interpreter has done a good job?

Ms. HARARY. If an interpreter were to work only once with a judge, perhaps the judge would not be able to determine the competency. But if a judge has been working with an interpreter on five, six, or seven occasions, he can tell by the reaction of the defendant or the answers given if the testimony or the interpretation is correct, and if they understand the questions and are asking the questions as propounded.

Ms. GONZALES. But, there is no guarantee the questions being interpreted are those being asked?

Ms. HARARY. There is no guarantee. But in my experience, there has been another interpreter in the court who might be working with the defense and might advise the defense, or whoever it might be, as to the competency.

Mr. EDWARDS. In what language are you proficient?

Ms. HARARY. Spanish, Portuguese, Yiddish, and a little English.

Mr. EDWARDS. I am sure you do well in all those languages, and you are marvelously proficient in English.

There is a vote on the floor so we will adjourn at this time. Thank you.

[Whereupon, at 1:15 p.m., the subcommittee was adjourned, to reconvene upon the call of the Chair.]

COURT INTERPRETERS ACT

WEDNESDAY, AUGUST 9, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2226, Rayburn House Office Building, the Honorable Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Volkmer, Butler, and McClory.

Also present: Helen Gonzales, assistant counsel, and Roscoe B. Starek III, associate counsel.

Mr. EDWARDS. The subcommittee will be in order.

Today we conclude this series of hearings regarding legislation designed to insure that all parties, defendents, and witnesses in Federal criminal and civil proceedings, are guaranteed due process of law.

The bills before this subcommittee would require the appointment of certified court interpreters under certain circumstances in Federal proceedings and would permit the use of Spanish in the District Court of Puerto Rico.

The hearings today will focus on provisions of the legislation pertaining to the district court for Puerto Rico.

We are honored to have with us today three distinguished judges including two from the district court for Puerto Rico and the U.S. attorney from Puerto Rico.

Our colleague, the Honorable Baltasar Corrada will introduce our witnesses at this time.

We certainly welcome you.

TESTIMONY OF THE HON. BALTASAR CORRADA, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PUERTO RICO

Mr. CORRADA. Thank you, Mr. Chairman.

Mr. Chairman, before I do that I would like to make a request.

The Governor of Puerto Rico, the Honorable Carlos Romero-Barcelo had expressed interest in being here today and testifying before the subcommittee. However, very urgent and pressing matters in Puerto Rico have not allowed him to appear here personally today.

However, Governor Romero sent his written testimony to my office and asked me to introduce his testimony in the record of these hearings, and I respectfully request that his statement consisting of six pages be made a part of the record of these proceedings.

Mr. EDWARDS. Thank you very much. We appreciate receiving the testimony of His Excellency, the Governor, and, without objection, it will be made a part of the record.

[The statement follows:]

STATEMENT OF HON. CARLOS ROMERO-BARCELO, GOVERNOR OF PUERTO RICO

Mr. Chairman and members of the subcommittee. My name is Carlos Romero-Barcelo. I am Governor of Puerto Rico, elected to a four year term on November 2, 1976.

I thank you for extending me this opportunity to present testimony concerning Sections 3 and 4 of H.R. 10228, the Bilingual Court Act.

I wish to begin by saying that I am in basic agreement with the testimony presented before this Subcommittee on July 19, 1978 by my good friend the Honorable Baltasar Corrada, Resident Commissioner for Puerto Rico. My purpose today, therefore, is to enter that concurrence into the record, along with my personal views as to why I believe the provisions in question merit your support.

As each of you is aware, there are two contending schools of thought in Puerto Rico concerning the direction in which our island's governmental institutions should be steered.

On the one hand, there are the advocates of independence and the advocates of Puerto Rico's free association with the United States in a context of maximum local autonomy.

On the other hand, there are the advocates of statehood, whose goal is to see a community of more than three million United States citizens achieve the full range of rights and responsibilities which today is denied to our people unless they move away from Puerto Rico to one of the fifty existing states.

Like the Resident Commissioner, I am an advocate of statehood. I believe deeply in the capacity of the Puerto Rican people to help shape the destiny of our nation as first class citizens.

I have no illusions about the cultural difference which set Puerto Ricans apart from most other American citizens. But I am also aware of our people's many contributions to the evolution of American life since that day in 1898 when the Stars and Stripes was first hoisted above our island.

By every available measure, including the results of all our local elections for many years past, more than ninety percent of the Puerto Rican people favor permanent union between our island and the nation of which we are citizens. Support for both independence and for autonomic association has steadily diminished over the past quarter-century.

But as ever-greater numbers of Puerto Ricans contemplate the prospect of becoming first-class American citizens, an important question arises: in order to become fully enfranchised United States citizens, must we surrender our identity and heritage as Puerto Ricans?

Under the U.S. Constitution, the answer must clearly be "no".

The Constitution does not distinguish between ethnic groups, between races, between geographic regions, between tastes in food or music or lifestyle.

Instead, the Constitution endeavors to guarantee to each American citizen the fullest possible opportunity to participate peacefully in our democratic system of government.

Trial by jury is an important part of that system.

In his testimony of July 19th, Resident Commissioner Corrada described the present prohibition on the use of Spanish as an official language for the conduct of Federal District Court proceedings in Puerto Rico as a "vestige of colonialism."

In a sense he is right, but, as I shall explain, I believe the other points he raised were even more fundamental.

Easily the most glaring vestiges of colonialism still to be found in Puerto Rico pertain to our lack of participation in the process by which officials of the Federal executive and legislative branches are elected: the fact that we have no votes on the floor of the House, no votes on the floor of the Senate, and no electoral votes for President and Vice-President.

Where the Judicial branch of the Federal government is concerned, we are technically treated as equals with our fellow American citizens in other parts of the nation. We do, in other words, have equal access to the Federal courts.

But this equality in the Federal court structure is indeed only technical. In practice, as the Resident Commissioner pointed out so well, there are serious flaws in the present system.

To my mind, what should concern this Subcommittee is not so much the language question *per se* as the fact that the present arrangement denies a majority of the Puerto Rican population any opportunity to serve on Federal juries, and consequently denies defendants the right to trial by a jury of their peers.

If the only issue involved were the incongruity of obliging Puerto Rican judges, attorneys, litigants and jurors to conduct the business of the Federal District Court in their second language, then I might be persuaded to look with sympathy on the argument that allowing Spanish language Federal trials in Puerto Rico would place an excessive administrative burden on the Federal court system as a whole, and thereby constitute an unnecessary and unduly expensive exception to general practice throughout the nation.

But the convenience of the parties involved is by no means the key issue.

What is really at stake is the essence of the jury selection process in a free society, and the implications thereof for plaintiffs and defendants alike.

There is no doubt that the present English language requirement in the Federal District Court for Puerto Rico guarantees that juries there will be totally unrepresentative of the community as a whole.

Those of us who believe in full Puerto Rican participation in the American system of government are deeply committed to extending the opportunity for such participation to every Puerto Rican capable of exercising it in a responsible manner.

We are also committed to the expansion and intensification of the teaching of English—as well as Spanish—in Puerto Rico's public schools. We want our society to become fully bilingual.

But we recognize that it will be many years before a substantial majority of our population will be comprised of persons sufficiently fluent in two languages to be capable of serving on an English language jury.

Accordingly, we feel it is extremely important that the option of holding Federal trials in Spanish in Puerto Rico be available, in order that our Federal District Court be able to dispense that high standard of justice which can be achieved only when the largest possible percentage of the adult population is eligible to serve on juries.

It was to this principle that I was referring a moment ago when I invoked the spirit of the U.S. Constitution.

At first glance, the idea of advocating the use of Spanish as an official language in Puerto Rico's Federal District Court might appear to represent a step away from closer ties between the American citizens of Puerto Rico and those of the fifty states.

In practice, however, I submit that it will have precisely the opposite effect: it will bring us closer together, by broadening participation in an institution of government—the jury trial—which is fundamental to our common political heritage as United States citizens. It will provide a firmer foundation for the future evolution of Puerto Rican participation in American public life.

This is the context in which I invite this Subcommittee to consider Sections 3 and 4 of H.R. 10228. What we have before us is an affirmation of American principles of government, and of the extension of their applicability to encompass the greatest possible number of American citizens. The Bilingual Court Act, in its present form, will reinforce the foundations of our democracy, and thus make our nation both stronger and freer.

Thank you very much.

Mr. CORRADA. I would also like to make a similar request on behalf of the Honorable Miguel Gimenez Muñoz, the Secretary of Justice for the Commonwealth of Puerto Rico, who has also sent written testimony to be submitted at these hearings and has asked me to do so on his behalf for the record.

[The statement follows:]

STATEMENT OF HON. MIGUEL A. GIMENEZ MUÑOZ, ATTORNEY GENERAL OF PUERTO RICO

Dear gentlemen, My name is Miguel A. Giménez Muñoz, Attorney General of Puerto Rico, and I appear before you today to state the Justice Department's position in relation to bill of law H.R. 10129 which provides for the use of the Spanish language in the Federal District Court of Puerto Rico.

Puerto Rico, during the 80 years of mutually beneficial relationship with the United States, has managed to retain its cultural identity, while at the same time accepting its share of rights and obligations as citizens of the United States. Such rights, encompass the ability to understand and actively participate and contribute in any judicial proceeding such person might be made part of. In the case before us, the approval of H. R. 10129, which provides for the use of the Spanish language in the Puerto Rico Federal District Court, is such, that it transcends any technical inconveniences which may arise out of the implementation of the Spanish language in the Puerto Rico Federal Court.

In order to adequately assess such a proposal, I deem necessary a brief expose of Puerto Rico's cultural situation.

Puerto Rico was acquired by the United States in 1898 as a result of the Spanish-American War. Upon that happening, Puerto Rico, a totally Spanish speaking country began a long process of assimilation. During the subsequent years, Puerto Rico's political as well as educational institutions developed in such a way that English became an important factor in every aspect of the Puertorrican way of life, but fortunately, the Spanish language, one of the most important elements in our culture, remained as the principal mode of expression in Puerto Rico.

Although a large segment of our people are bilingual, the country as a whole utilizes Spanish as the prevailing language. As a result of this, the Puertorrican state courts conduct their business in Spanish, thus giving the parties beforc it the opportunity to clearly understand processes which affect these people in the light of the reality that Puerto Rico, although composed of American citizens is a Spanish speaking country.

The bill presented to your consideration, H.R. 10129, contains not only a recognition of Puerto Rico's right to preserve its cultural identity, but in addition, and equally important, it grants American citizens the constitutional right to understand and actively participate in the judicial proceedings which might affect their interests.

At the present moment, the Puerto Rico Federal Court is composed of three judges, all of whom are native Puertorricans, and are perfectly qualified to conduct hearings in Spanish as well as English. These three judges' native language is Spanish, for which it would be more of a relief to conduct the hearings in Spanish than a burden, thus assisting the judges in their functions, as well as most of its employees who are also bilingual.

The majority of the lawyers in Puerto Rico, and that composes well over a 95% of the total of members to the bar, are native Puertorricans whose main language is Spanish. Any lawyer who at the present is required to take his claim to the federal court to seek relief, must litigate in English. This results in an impediment to local lawyers when appearing before Federal Court, and as a result only a small group of lawyers are able to appear before said court, not because English speaking lawyers are better qualified, but because many lawyers feel that their clients are entitled to the best type of representation, and their inability to master the English language properly will hinder them in providing their clients their professional services. As a result of this, only a handfull of local lawyers are able to take their cases to the federal court.

The problems encountered are not only limited to the number of lawyers able to litigate in English in the Federal Court, other matters of far greater importance are to be considered and these, which bear constitutional implications are the principal arguments in favor of the adoption of this proposed amendment.

As I have stated previously, the vast majority of the people in Puerto Rico speak Spanish as their native language. Cases brought up before the court mostly relate to matters pertaining to local residents whose case comes to the Federal Court because of special statutes such as Section 1983 or in the case of criminal violations, mostly Puertorrican residents which have violated Federal Crime Statutes. This, of course, in addition to the fact that most of these attorneys which represent local or foreign clients are Puertorrcian.

When this matter is analyzed from the constitutional point of view, there are various substantial arguments which can be sustained. First, any defendant in a criminal prosecution is entitled to fully understand, actively participate and contribute to his defense in his trial. At present, when a defendant is not able to understand English, a court interpreter is provided. Nevertheless, such an interpreter is not able to produce simultaneous translations, but is only able to translate phrases after fully pronounced by the speaker. In addition, any of the counsel's arguments with the judge are not translated, thus, the defendant misses out on extremely important aspects of his trial.

Although it has been sustained by other people, specifically Puerto Rico's Federal District Court's Chief Judge, Hon. José V. Toledo, that the use of the

Spanish language in the Federal Court should be limited to criminal cases only, there is no reason for which such a necessary innovation should be limited to the criminal area exclusively.

Notwithstanding the fact that in a criminal prosecution the defendant's liberty is at stake, there is no valid reason for which there should be a distinction between personal property rights, which would be the object of litigation in most civil cases, and the right to a fair criminal trial. In these types of cases, we will find that the same elements present in a criminal prosectuion would be present in a civil case.

Most of the witnesses brought for questioning in a trial will also speak Spanish. The judge will still be a native Puertorrican, the court's personnel, including all members who actively participate in a trial are Puertorrican, and the jury will also be composed of mostly Puertorricans whose understanding of the Spanish language greatly outweighs their mastery of the English language. As Judge Toledo stated in his appearance before the Committee, alternate jury wheels could be effectively implemented in order to provide English speaking jurors for English trials where both parties and the judge agree upon the use of English for those non-Spanish speaking parties.

As stated by Judge Toledo, the utilization of Spanish in the Federal Court would provide for a more ample selection of jurors, who would not be required to master English proficiently. This argument points to the fact that the jury selected by counsels from the jury wheel may not constitute a group of his peers because only English speaking jurors are selected, and of these, only those who master the language enough so as to fully understand the proceedings are allowed to enter the jury wheel. Because of various sociological and educational reasons, these jurors may not be necessarily the defendant's peers, thus providing another argument of fundamental importance in favor of using Spanish in Federal Courts.

Although the technical implications of this proposal should be the object of consideration, they should not constitute an obstacle when considering the practical implementation of Spanish in the courts. Although elements to be taken into consideration such as transcripts upon appeals to the District Court of Appeals and their translation are important, such matters can be dealt with in a reasonably fast and efficient manner providing that adequate personnel be assigned to these functions, since the costs of these, at least in civil cases will be incurred by the appellant.

Puertorricans, as citizens of the United States have the right to enjoy the benefits of fair judicial proceedings responding to their needs. Puertorricans, as Americans citizens should be allowed to receive such benefits which aid in the preservation of their cultural background and language. The approval of this bill will not only provide for the needs of the Puertorrican community, but will also aid in the preservation of the Puertorrican culture while at the same time granting recognition to the need of Government to respond to the particular needs of a large segment of the citizenship. It is for these reasons that I urge you to approve the passage of this bill which in the long run, will result in a better working relationship between the United States and Puerto Rico, and the growth in respect and admiration between the two.

Mr. CORRADA. Both testimonies, Mr. Chairman, I would like to underscore, fully support the provisions of sections 3 and 4 of H.R. 10228.

Now, I have the great pleasure, Mr. Chairman and members of the subcommittee, of introducing to you not only distinguished and eminent jurists from Puerto Rico and the U.S. Court of Appeals, but particularly with respect to the two judges from Puerto Rico, my personal friends and colleagues for many years, for whom I have the highest respect.

Although there might be discrepancies and disagreements in terms of how we envision these bills, I have great consideration and respect for all of them, and I am sure that their testimony will help this subcommittee in its work.

I am very pleased to introduce Chief Judge Jose V. Toledo of the U.S. District Court for the District of Puerto Rico; Judge Juan R. Torruella of the U.S. District Court of Puerto Rico; and the Honorable Chief Judge of the U.S. Court of Appeals for the First Circuit.

Mr. EDWARDS. Thank you very much, and would all three of the witnesses please come to the witness table?

Mr. CORRADA. Mr. Chairman, I would also like to recognize the presence here of another witness who will testify later, the U.S. attorney for the U.S. District Court in Puerto Rico, the Honorable Julio Morales Sanchez.

Mr. EDWARDS. Thank you.

Incidentally, Judge Coffin was a Member of the House of Representatives from 1957 through 1960, at which time he joined the John F. Kennedy administration as Deputy Administrator for AID. He was appointed to the first circuit court by President Johnson in 1965. It is indeed a pleasure to have not only the distinguished judges from Puerto Rico with us today but also the Chief Judge, Frank Coffin.

We have read the exellent testimony of all three witnesses and without objection, all of the statements will be made a part of the record.

[The statements follow:]

STATEMENT OF CHIEF JUDGE FRANK M. COFFIN OF THE U.S. COURT OF APPEALS FOR THE FIRST CIRCUIT

Mr. Chairman, I appreciate the opportunity to convey the views of the Judicial Council of the First Circuit concerning the bills pending before you bearing the descriptive title, "Bilingual, Hearing, and Speech Impaired Court Interpreter Act". S. 1315, H.R. 10228, and H.R. 12003. Our interest stems partly from the fact that the district of Puerto Rico is a major source of appeals heard by us, rising from 13 percent of our total in 1970 to 27 percent in 1977 and currently running at 31 percent for the first six months of 1978.[1] We also are charged, as a judicial council, with general oversight of judicial administration in Puerto Rico. We support the district's efforts to meet its needs for added support personnel, additional judgeships, visiting judges, and new facilities.

We have for the past four years been concerned with the problems posed in trying to reconcile a nationwide, English-speaking federal court system with the cultural values of a community which is largely Spanish speaking. In 1975 our Council commissioned a Boston lawyer with competence in Spanish, Ms. Susan Garsh, to conduct a preliminary study of problems to be considered if Spanish were permitted to be used in the Puerto Rico district court. I sent a copy of this study to you, Mr. Chairman, under date of September 3, 1975. To my knowledge this is the only such attempt to focus in detail on the nature and magnitude of problems inherent in any conversion to bilingualism. I would add that if the Department of Justice has taken a position on this matter, we in the First Circuit have no knowledge of it. No representative of the Department has consulted with us, asked our views, communicated its views, or conducted, so far as we are aware, any kind of study. If there is one thing I can say with absolute and unqualified conviction it is that the kind of study done so long ago by Ms. Garsh must now be done with the kind of depth and authority that only adequately funded professionals can bring to such a task.

I urge this on you with the recognition that this proposed legislation is complex in a unique way. It is an attempt to achieve a more harmonious relationship between two quite different value systems: the desire of those brought up in a Spanish culture to have their language used in the important matters of their

[1] Recent figures from our clerk's office, not necessarily identical with Administrative Office statistics ndicate the following:

Calendar year	Total appeals in 1st circuit	Appeals from Puerto Rico	Criminal	Civil	Administrative
1975	493	113	22	86	5
1976	575	102	29	78	5
1977	569	153	34	116	3
1978 (1st 6 mo)	304	93	5	88	

lives; and the administration of justice within a federal court system which is based on the precise use of words in cases, statutes, rules and regulations in English and staffed, other than in Puerto Rico, with supporting personnel and judges who use only English. The language value system is highly charged, emotionally and politically. The justice value system implicates qualities both ethical and intellectual. The former can be accommodated by the simple fiat of Congress: let Spanish be used in court. The latter is subjected to novel burdens only at great risk. The legislation has as its unarticulated premise the proposition that justice is advanced when a person, fluent in a tongue other than English, can present his cause or defense in his own language. The danger is that Congress may order this to be done without realizing the practical problems involved, or the investment (which some might deem disproportionate) in space, facilities, supporting personnel, and additional judges who will be needed if bilingualism, thought to be a step forward, is not to wind up being several steps back in terms of waiting time for litigants, access to both the trial and appellate courts, and the quality of justice dispensed. The fact that the Senate enacted S. 1315 without hearings or debate, catching individual judges, our circuit council, the Judicial Conference, and bar associations by surprise shows how far we are from recognizing the delicacy and danger of combining cultural reform and institutional change.

Perhaps in large part because of this casual, wholly political approach to the exclusion of any interest in the substantive question of the quality of justice, we face the prospect of bilingualism with much less confidence than four years ago. We feel compelled to note at the outset two facts which members of this committee might resent as obvious, were we not to say that we have encountered proponents of the use of Spanish in the Puerto Rico federal court who were in complete ignorance of them. The first fact is that the Commonwealth of Puerto Rico possesses its own "state" court system, comprising a highly sophisticated network of courts of general and specialized trial jurisdiction and a well respected Supreme Court, under highly regarded aggressive and innovative leadership. Most ordinary litigation, civil and criminal, occurs there. This is a much larger system than the federal district court. The latter sits only in San Juan, and has three district judges (soon to be seven), whereas the local court has hundreds of judges sitting in all the towns and cities of Puerto Rico. The only language allowed in the local courts is Spanish.

Our second observation is that in the Puerto Rico district court at present, any litigant who does not comprehend English is afforded the services of an interpreter sitting by his side and translating into Spanish all of the proceedings. The regular United States district judges in Puerto Rico are effectively bilingual, as are many Puerto Rican citizens. The district judges sometimes use Spanish for informal, off-the-record conferences, but all formal proceedings are in English and the numerous court dockets and records are kept in English.

IMPACT ON THE TRIAL JUDGE

My first substantive remarks concern the enormity of the change to a two language system and its impact on the trial judge. I suspect that most people, in thinking about the legislation, have in mind a person accused of crime who understands no English. Making that person feel more comfortable, reducing the feeling of helplessness and hopelessness, is appealing. But the majority of cases are not simple factual criminal cases. They are cases arising out of a complex network of statutes or regulations which are written in English and have received their gloss of interpretations from judges who have expressed their minutely nuanced views in English. The rules of procedure, criminal and civil, are not only in English but their application is documented in hundreds, thousands of English language decisions. In many cases the record will in large part be that of an administrative agency, kept entirely in English. I mention but shall not dwell upon the fact that visiting judges will be unavailable to assist or that non-Spanish speaking prosecutors and other personnel from stateside agencies will be precluded from participation. I point here only to the burden on the trial judge.

It seems to me indisputable that the help he receives from counsel will be rather seriously diminished as they give him their impressions in Spanish of the statutes, regulations, rules of procedure, and case law precedents of what is undoubtedly the most complex body of law in the world, the United States Code and the cases interpreting it. Nor is it a light burden to require all decisions to be in the two languages, when one considers that a decision frequently covers issues concerning jurisdiction, standing, procedural rules, indispensable parties, mootness, pendent questions, as well as the careful distinguishing of authorities bearing on the merits.

While there will be some saving in interpreters' time in cases where the parties and witnesses are all Spanish speaking, I suspect that the burden on the trial judge, at least in a complicated case, will be increased in managing the trial, and in coming to and in formulating his decision.

One of my collcagues has eloquently phrased his apprehension:

"Where a court, like a federal court, is a specialized body dealing almost entirely in thc laws of an English-speaking society, and where it is necessary for that court to operate as part of a court-system which is exclusively English-speaking, serious problems are raised by introduction of another language. To cripple the federal court in San Juan to the point that it loses its ability to function would be too high a price to pay for the advantages of Spanish."

IMPACT ON THE DISTRICT COURT

To this qualitative burden on the trial judge, there is the quantitative burden on the entire district court. The court is already in the throes of a traumatic metamorphosis, having grown from a one judge court when I came to the bench in 1965 to a seven judge court (assuming passage of the omnibus judgeship bill). In 1965 a total of 688 civil and criminal cases was filed in Puerto Rico; in 1977 the number was 2143—a fivefold increase in cases. If diversity jurisdiction remains, there is no doubt that the advent of Spanish in the federal court will see a significant siphoning off of cases from the Commonwealth's local court system. The prospect of obtaining a jury trial and consequently higher damages in federal court has been estimated in the Garsh report to result in an increase in filings of from 100 to 400 percent, i.e., of from 1600 to 6000 additional cases. Even if the maximum should be halved, this increase would require from four to seven more judges and would make the district court of Puerto Rico much larger than that of Massachusetts, which has twice the population. If diversity jurisdiction is abolished, the siphoning off effect of being able to have a jury trial in Spanish will still draw many cases where there is both state and federal jurisdiction. Damage suits against Commonwealth officials under 42 U.S.C. § 1983 are an example; I cannot imagine a plaintiff taking his case to a judge in Superior Court when he could have a jury trial in federal court. It is ironic to contemplate the end result of a concern that an overbearing English speaking nation not stamp out the critical strains of local Spanish culture and tradition: the presence of an inflated federal district court drawing cases away from a dominantly civil law court system of steadily increasing competence.

JURY PROBLEMS

The jury provisions of this legislation pose a set of problems, ranging from constitutional issues to administrative questions. As the Judicial Conference Committee on the Operation of Jury System has noted, the presence of two separate master and qualified jury wheels, for use in drawing English-speaking and Spanish-speaking juries raises the question whether a litigant's right to a fair cross section of the community has been sufficiently respected.

BURDENING APPEALS

Apart from the questions relating to the increased demands on trial judges and the expected increase in litigation in the district court, there are problems affecting the appellate process. The first arises from the expectation that in many cases there will be a change from the Spanish-speaking trial attorney to the English-speaking appellate attorney. This may well occasion delay if not result in increased costs. Even if adequate numbers of skilled reporters and translators are obtained, the increased costs of preparing a record on appeal are ominous.

The first cost is that of time since, according to a Puerto Rico translator cited in the Garsh report, a translator working on an easy transcript is able to translate 7 pages a day. This estimate was increased to 8.3, 12.5, and 14.6 pages per day by Washington translation services. A typist doing an ordinary transcript in English at the rate of perhaps 8 to 10 pages an hour can do 80 pages a day. We therefore face the unpleasant fact that to turn out a two day, 200 page transcript of a criminal trial conducted in English, a maximum of three days' typing would be required while the record of a trial of similar length in Spanish would require—in addition to this period [2]—a further period of from 13 days (at 14.6 pages per day) to 28 days (at 7 pages per day). *See* generally Garsh Report, pp. 10–15. The bottom line is

[2] "It is apparently impossible to locate a translator-court reporter or a person who could listen to Spanish testimony and simultaneously prepare a stenotype tape in English." Garsh Report, p. 15.

that it is likely that the preparation of a translated record for appeal would take from four to ten times as long as at present.

Not only is the prospect of delay in obtaining English translations of transcripts foreboding, but so, not surprisingly, is the prospect of increased costs. As of 1974 the cost of a page of certified translation was from $6.00 to $7.00, over four times the cost of an original page of transcript in English. (A.O. Bulletin 491, Supp. No. 5.) In other words, an appeal involving a thousand page transcript would cost either a party or the United States $6,000 to $7,000 in addition to ordinary costs.

A final observation about appeals. Federal district courts such as that in San Juan, have extensive powers. Many of the cases are not small individual actions but major disputes involving municipalities, federal agencies, unions and businesses. A district judge can enjoin local legislatures and officials and can shut down institutions and order certain action from entire communities. He can impose severe penalties, including vast sums of monetary damages, on the United States government itself and its officials. To guard against the abuse of such powers by an individual district judge, courts of appeals have been established with the power to issue stays and various types of emergency orders in connection with their supervision of the district courts. If proceedings in Puerto Rico are conducted in Spanish, it will be impossible for litigants to receive even preliminary relief in the court of appeals until the necessary papers are translated. Usually the necessary papers will include transcripts of lower court proceedings, some of which have hundreds or even thousands of page plus numerous exhibits. Assuming, as the Garsh report indicates, that a skilled translator can translate perhaps seven to ten pages of transcript a day, we must be prepared to envisage cases where it will be months before any form of meaningful appellate review or supervision even at the preliminary stage can be exercised by a United States court of appeals. The Congress must ask itself whether it wishes this kind of unchecked power to be delivered into the hands of any group of individual trial judges, no matter how able. Put another way, if the Puerto Rico district court can use Spanish, it may well become isolated from the system of which it is a part.

PROBLEMS OF SUPPLY OF PERSONNEL, SPACE, FACILITIES

Having dealt with the burden on judges, the court, juries, and on appeals, we now come to the bedrock issues dealing with logistics—the provision of sufficient space, equipment, money, and trained personnel to make a bilingual court in a sophisticated metropolitan society viable. We begin with space. The fact is that both the Judicial Council and the district court have for the past several years been trying to correct the inadequacy of planning that brought about the "new" courthouse in San Juan. It was obsolete before it was completed, utterly failing to anticipate that at its completion there would be seven district judges rather than three. Space to accommodate the additional supporting staff of court reporters, clerical personnel, jury offices, electronic recording machine operators, translators-interpreters, and extra magistrates and judges necessary to achieve a court able to function effectively and efficiently in two languages is not to be found in the existing courthouse structures.

In addition to space is the need for highly skilled personnel. These are virtually non-existent. Court reporters, particularly those qualified to record in Spanish, are difficult to find. (Garsh Report, p. 25). There are no training facilities in Puerto Rico. It is doubtful that reporters in the Commonwealth courts (if indeed it were deemed wise to attempt to lure them away) would meet federal standards. Skilled translators and interpreters are equally rare. Testing of several applicants, noted in the Garsh Report at p. 16, yielded no likely candidate. The clerk of the court thought, in 1975, that it might take six months to find only three well qualified translators. *Id.*, p. 17. Pay differentials are one big stumbling block: interpreters and translators in the federal court system are apparently paid no higher a salary than GS–6, whereas similar personnel in the State Department, Secret Service, FBI, and IRS are paid at rates as high as GS–9, 10, and 11—and GS–14 for simultaneous translators. (Garsh report, p. 17)

Mr. Chairman, the bland title given the bills on bilingual court legislation conceals an issue of deep political appeal. For decades Puerto Rico has been, as it still is, struggling with the task of identifying its future. A spin-off of that struggle is the proposal that Spanish be used in federal court. Some sponsor the idea because it is a step toward greater autonomy and separateness; others sponsor it because it may satisfy cultural aspirations while preserving a traditional federal institution.

Our Judicial Council is concerned with the humble, rock bottom problem of administering justice with a reasonable degree of competence, without excessive

cost or delay. The district court and the Commonwealth of Puerto Rico have both been growing at such a pace that we have not yet reached the stage where we have had enough judges and other personnel to do a quality job without pressing continually for outside help. Even so, the backlogs persist. To introduce into this still fragile situation a demand which would tax even the most adequately staffed and experienced court without thoughtful and detailed planning and sustained generous funding would be to make a cruel charade of the idea of enlisting the court system in the cause of social and cultural reform.

STATEMENT OF CHIEF JUDGE JOSE V. TOLEDO OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

U.S. DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO,
San Juan, Puerto Rico, August 3, 1978.

Hon. DON EDWARDS,
Chariman, Subcommittee on Civil and Constitutional Rights,
Washington, D.C.

DEAR MR. CHAIRMAN. As requested, included herewith are copies of the statement which I will give at the hearings scheduled by the Subcommittee which you preside on H.R. 10228 and S. 1315.

I hope that said copies arrive in your office by Monday, August 7, 1978, in order to comply with the requirement that the statements be filed at least 48 hours before the deponent's scheduled appearance.

Sincerely,

JOSE V. TOLEDO,
Chief Judge.

Enclosures.

My name is Jose V. Toledo and I am Chief Judge of the United States District Court for the District of Puerto Rico. I appear before you today to give my views in relation to bill No. S. 1315 equivalent to H.R. 10228 and H.R. 12003 presently before your consideration. Specifically, I will address myself to sections 3 and 4 of said Senate bill dealing exclusively with proceedings before the United States District Court for the District of Puerto Rico.

On February 5, 1974, I appeared before the Senate Subcommittee on Improvements of Judicial Machinery to testify in support of the Bilingual Courts Act as it was then drafted. At that time I stated, and I quote:

"... I am referring specially to defendants in criminal cases who in most cases are able to understand the proceedings being conducted against them only through the words of an interpreter."

Thus I am already on the record, having endorsed more than four years ago the use of Spanish in criminal proceedings in Federal Courts for those defendants unable to understand English. However, I feel that Senate Bill 1315 being presently considered by this subcommittee goes beyond the limited circumstances envisioned in 1974, and the impact of such proposed legislation on the Federal District Court of Puerto Rico is of great concern to me.

My official position is that the provisions of S. 1315 enabling the United States District Court for the District of Puerto Rico to conduct proceedings in the Spanish language should be limited to criminal proceedings only.

As I stated in my appearance in 1974, I feel that due process for criminal defendants is best guaranteed by conducting the proceedings in Spanish when it so happens that Spanish is the language best understood by the defendants. Lest I be misunderstood, let me state for the record that I have not concluded that the due process clause of the Federal Constitution mandates that criminal proceedings be conducted in the vernacular language of the defendant. I am merely stating my conviction, as a lawyer and as a judge, that the due process clause is best implemented by making the criminal proceedings more meaningful to the defendants by conducting them in their vernacular tongue when that is possible within the Federal judicial system.

At the present moment I can not shy away from my duty to alert Congress of the practical problems that these bills may cause to the entire Federal judicial system.

Section 3 of the proposed Senate bill reads in part as follows:

"... initial pleadings in the United States District Court for the District of Puerto Rico may be filed in either the Spanish or English language and all further proceedings shall be in the English language, unless upon application of a party or

upon its own option, the court, in the interest of justice, orders that further proceedings or any part thereof, shall be conducted in the Spanish language . . ."

Senate bill 1315 does not limit its provisions to criminal cases. Moreover, it does not define the term "Interest of Justice". Perhaps the congressional intention in including this undefined term is to grant the court ample discretion in deciding in which circumstances it will conduct proceedings in Spanish. But if this is the case, why provide that in all cases, at the apparent option of the party, the initial pleading may be either in English or Spanish? Did Congress mean to include pragmatic considerations within the concept of "Interest of Justice"? Can the court, "in the Interest of Justice" consider whether it is prepared to handle the additional clerical burden of receiving documents in two languages at the option of the filing party, or the need to have translations automatically done when the initial pleadings are filed in Spanish? It is most desirable to obtain legislative guidelines as to which elements ought to be considered when determining whether "in the Interest of Justice" the proceedings are to be conducted in Spanish.

Then again, in civil cases how "just" should "justice" be? Should the court lend its "bilingual" ears to the foreign party, represented by english speaking counsel and order that proceedings be in English or should the court find that justice is best served by allowing the proceedings in Spanish thus favoring the Spanish speaking party, or the Spanish speaking attorney? In regard to civil litigation there should be a clear statement as to the congressional intent in a statute such as the present one. Except in a few cases, there is no right of access to the federal courts for general civil matters. As a matter of fact it had been my previous understanding that it was the intention of Congress, within the constitutional limits imposed by article III, to limit the jurisdiction of federal district courts in civil cases in general and to bolster the role of the State courts system as effective instruments in imparting justice in our society.

All of those present here today who are conversant with legal terms and the operation of the different court systems know that jurisdiction is not a matter exclusively defined by statutes. There are other, perhaps "nonjuridical" elements, that shape the desirability of one court over the other and which make them a more desirable arena for litigants. Forum-shopping is a much abhorred practice in the Federal judicial system. However, I feel that in regard to the Federal District Court for the District of Puerto Rico, Senate Bill 1315 will actually promote such practice of forum shopping in civil cases.

It is in the calendar of civil cases where the language to be used poses a problem close enough to constitute a threat to the efficient operation of our court. It is a fact demonstrable by available statistics that our regular civil case load, as a court conducting all proceedings in English, is steadily increasing in alarming proportions. In fact, the Omnibus Judgeship Bill pending final approval by this Congress deals only with actual case load contemplating an "English-speaking" court. The statistical projections reveal that by the year 1981, under actual conditions, (that is, even if we still were exclusively an English-speaking court), the proposed court of seven judges will be overburdened by the ever increasing case load.

Again referring to the civil docket of the court, when one considers the fact that there is no right to jury trials in civil cases in Puerto Rico, that local judges invariably issue judgments granting comparatively lower amounts of money as compensation, and having in mind the tremendous backlog existing in the trial courts of Puerto Rico, it is quite possible that a great proportion of these cases may be filed in our Federal District Court increasing our case load to unmanageable proportions once the English language ceases to be a barrier.

In addition, the latest statistics reported to us by the office of the court administration of the Commonwealth of Puerto Rico reveal that in fiscal year 1973–1974, 74,005 civil cases were filed in the superior courts of Puerto Rico and that, out of those, 13,116 were potential diversity jurisdiction cases. As expressed by the chief justice of the supreme court of Puerto Rico, the State courts' case load has sharply increased, and proportionally, we would expect a like increase in what we have termed "potential diversity jurisdiction cases".

I feel that if the Spanish language were to be applied to criminal proceedings only, the case load of our court would not be affected to any great degree in view of the fact that the number of criminal cases to be filed depends exclusively on the Justice Department and the United States Attorney and I do not think that language is the criterion which determines the filing of such cases. Moreover, were the bill limited to criminal proceedings only, the term "Interest of Justice" becomes judicially manageable because of the dictates of the due process clause, which serves as a clear guideline pointing to the goal of making the proceedings meaningful to the defendant.

Logically, as it is to be expected, the time consumed in each case will necessarily increase, due to the delay caused by the translation, either written (for pleadings

to be considered by our court of appeals) or oral (for proceedings in which the Government is represented by an English speaking attorney, as is sometimes the case).

The use of the Spanish language will encourage more lawyers in Puerto Rico to practice before our court. That is indeed a most desirable result. However, if that is to be the case and we are to have attorneys from all over the island filing cases in our court, it is only fair that we open courthouses in equi-distant geographical areas with additional clerical personnel. That means an additional increase in judges and their corresponding judicial staffs beyond those contemplated by the pending omnibus judgeship bill. Otherwise, the San Juan Court will be unwisely congested and would not conform to the standards of the judicial conference as to the goals to be attained for the best operating conditions of the Federal district courts throughout the nation.

To be completely honest with the members of this committee, and at the risk of being blunt, I am most worried, if not frightened, by the possible lack of funds and of judicial and parajudicial personnel to adequately implement this bill. As Chief Judge of the United States District Court for the District of Puerto Rico in charge of its administrative affairs, it is my duty to exhaust every possible alternative in order to keep our court on its feet. Our goal is not merely to maintain the present conditions against the everrising tide of greater case loads. It is my duty, and indeed my plan of action and my daily agenda, to see that our court betters itself every day both in matters relating to internal administration as well as in the quality of the work performed by us, the judges sitting there. I do not want to see Senate bill 1315 become an obstacle in our efforts to improve working conditions. Rather, we want to further host a reasonable environment in which justice becomes the primary concern of the judges. I do not think that inefficiency, haste, burdensome case loads, and overbearing calendars can lead to sound judicial decisions, well founded opinions and wise sentences. Nor am I happy with the idea of seeing my role, as well as that of my colleagues, turned into one of mass-manufacturers of "decisions".

Several suggestions have been made with the intended purpose of eliminating any objections of pragmatic nature to the implementation of the bill. It has been suggested that the United Nation's system of simultaneous translation offers a viable model, but studies within the First Circuit indicate that translators with that kind of skill are very scarce, work very short hours, are paid extremely high salaries, and could not be assembled in sufficient numbers to provide daily services to our court. Moreover, there is another caveat which nobody has mentioned up to this date which worries me more than any other consideration of an "administrative" nature. Bilingualism within the Federal judicial context poses a problem not easily solved by reference to non-judicial circumstances, such as the United Nations' translation system which I just mentioned. Judicial proceedings are not parliamentary in nature, they are governed by specific rules sanctioned by the United States Supreme Court after congressional enactment. The fact that some of the rules have been deemed procedural in nature, rather than constituting "substantive" rights, does not detract from the reality that said rules are to be monitored by the presiding judge, and it is his ministerial duty to see that they are complied with. In some circumstances non-compliance with procedural rules can alter the outcome of the cases. To be more specific, I am referring myself, for example, to the translation to be had in the trial of a criminal case. Even when the best translators available are hired, it seems to me that the judge will have to listen to the translation offered, either for the record in the event the case is appealed to the court of appeals, or to the defendant when the court decides that "in the interest of justice" the defendant should receive a translation into Spanish from the proceedings conducted in English. It is quite possible, and it has been my personal experience sitting in a criminal case, that a crucial word, although correctly translated in a literary sense, is erroneously translated as to its legal and applicable sense.

In a criminal trial where the nuances of the languages involved are not observed and a word is not translated into the term correctly conveying its legal sense, either to the defendant or for the record, a mistrial is quite possible according to the rules of criminal procedure. Thus, in order to obviate this type of dangerous situation it is the duty of the presiding judge to monitor, more or less actively, the translation of the proceedings. Even when not all erroneous translations will rise to the level of a mistrial, if we are to continue our efforts to preside over fair proceedings, we will have to take on the additional burden or worrying over the nature of the translation.

That is why the simultaneous translation system of the United Nations mentioned before, might not meet all the necessary judicial requirements. In such a system neither the speaker nor the presiding party is aware of the translations taking place. It does not afford the guarantee of allowing the judge to observe the translations from time to time and to make pertinent interjections to correct any dubious term or to instruct the jury as to the correct meaning of any word used during the proceedings, directing them to disregard any other possible meaning which could have detrimental connotations for either party in the suit.

At the present moment the Federal District Court for the District of Puerto Rico uses a one-way translation system in all criminal cases where the defendant does not understand English. The proceedings are conducted in English and these are translated into Spanish for the benefit of the defendant. This is done directly to the defendant, either in a low voice or through earphones. However, the judge is aware of the translation taking place, he can observe the reactions both of the defendant and of the translator and can halt the proceedings when a difficult term comes up or when the defendant seems unsatisfied with the translation. Also, the translator can gesture for "time out" so as to translate a lengthy sentence, or request that the court reporter read back something which was missed.

The testimony of Spanish speaking witnesses and/or parties is also translated into English for the Record. In this case, after the statement is offered in Spanish, sentence by sentence, it is translated out loud into English for the court reporter to take down. Again, the translator has the option of halting the witness when offering a long or complex sentence so as to accurately put into the record the English version of his testimony. Many a time has the judge clarified the record when such translations could possibly lead the court of appeals to error.

Other potential problems that ought to be considered when enacting Senate bill 1315 is the need to make sure that appeals to the Appellate Federal courts will not be so delayed by the need for translation of the record once transcribed so as to jeopardize the litigants' rights to appeal, especially in emergency situations such as an appeal for a lower bail in a criminal case, an interlocutory injunction, or others. Another problem which should be considered in regard to the proposed legislation is the ability of non-English lawyers, which could not be denied access to practice in said bilingual court, to follow and ably use and expound Federal case law. The bill should not operate to the detriment of litigants' requests for a good legal representation and our court's expectations of being able to rely on the quality of the counsel appearing before it. In such an event our court would have to take on the burdensome and delicate task of evaluating the attorneys in order to assure that the parties are at least reasonably represented by competent counsel. That would turn us into a bar of examiners, and I do not think that Federal judges should be requested to pass on the attorneys' competence to represent their clients. This would be a task very different from the disciplinary powers that the court has, and which it exercises in a very few number of extraordinary cases in which attorneys have not complied with the court's orders.

Honorable members of this committee, I urge you to review Senate bill 1315 as it is now drafted, and to limit its provisions for bilingual proceedings in the United States District court for the District of Puerto Rico to criminal cases only. I also suggest that if such a revision is not feasible within the present session, that Senate bill 1315, H.R. 10228 and H.R. 12003, be extricated from the rest of the accompanying bills and to altogether postpone the enactment of the same, until a more detailed study be made of the practical problems posed.

Some of you might ask me whether my position, as stated here today, is one based strictly on considerations of an administrative nature. If I were in your shoes I would pose the following question: Assume for the sake of argument that Congress will provide all necessary judges, personnel, facilities, as well as an efficient system of translation so that all objections of a practical nature are obliterated, would you then have any objections to Senate bill 1315?

To this question my answer is: Gentlemen, my official and personal position is that S. 1315 ultimately presents a question of policy in regard to Puerto Rico, which is to be determined by the United States Congress. To the extent that this, matter presents a question of partisan politics in Puerto Rico, I can not give you my personal opinion. I am here in my capacity as Chief Judge of the United States District Court for the District of Puerto Rico. And it is precisely in that capacity in which I have always considered any matters relating to the operation and status of that court. However, as a student of the Federal constitutional as well as judicial policy, I urge you to consider the possibility that this bill has the effect of further opening the doors of a Federal district court to private litigation which should properly be before the State courts, in this case, the courts of the Commonwealth

of Puerto Rico. I also invite you to ponder on whether it is the intention of Congress to estrange this, a Federal district court, from the rest of the Federal judicial system, and whether this would be consonant with the mandates of the Federal Constitution.

For the moment, I only request from this honorable committee to refrain from transforming the United States District Court for the District of Puerto Rico into a tower of Babel in which the soft, but strong voice of justice is overpowered by the confusion of a thousand tongues. Let me instead invite you to build, step by step, a humble stair to make our goals of efficient justice reachable. At this moment, bilingual proceedings in criminal cases only seems to be a strong foundation upon which to build the rising road to our goals.

Thank you.

STATEMENT OF JUAN R. TORRUELLA, JUDGE, U.S. DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

Mr. Chairman and members of the subcommittee, I thank you for the opportunity of being heard on the subject of H.R. 10228 and S. 1315.

My remarks will be limited to Sections 4 and 5 thereof.

It is my opinion that these proposals, although undoubtedly well-intentioned, will not only cause irreparable harm to the United States District Court for the District of Puerto Rico, but will also be impossible to implement and subject to serious constitutional challenge.

It goes without saying that no court of justice worthy of such denomination can operate under a system wherein a criminal defendant is unaware of the nature of the proceedings against him or is unable to intelligently aid in the defense of his case. If the system used presently in Puerto Rico were defective in any such sense, I could not in good conscience oppose corrective measures. But such is not the case. The present system of simultaneous translation is eminently fair and fully meets the requirements of due process. This is not a theoretical statement but one based on observation through 20 years of active practice of law in the district court in Puerto Rico, both as a lawyer and as a judge. I challenge the bringing forth of facts demonstrative of the failure of our present system.

In contrast, our District Court, as part of the federal judiciary system, has a consistent, unchallenged and universally recognized record of nearly 80 years of effective contribution to the administration of justice in Puerto Rico. Notwithstanding severe manpower limitations throughout its history, our Court has performed as a viable and integrated part of that system.

In the year ending on June 30, 1977 each Judge in our Court terminated an average of 641 cases, compared to the National average of 384 cases per Judge. As of December 31, 1977, there were 2142 civil and 213 criminal cases filed before our Court, an average of 714 per Judge, which is well above the National average of 411 cases per Judge. Our Judges averaged 50 full trials per year of both civil and criminal cases, which again exceeded the National average. In the First Circuit, appeals from our District constituted 26.7 percent of the appeals from the District Courts and 20.6 percent of all appeals to the Court of Appeal . I will not further burden the Committee with statistics which I am sure are available to you, and I apologize for what sounds like self-praise. The purpose is otherwise. These solid facts show beyond any doubt that the present system has worked and continues to work with efficiency while providing an adequate forum for the litigation of Federal controversies.

Furthermore, challenges to both the translation system and the jury system have been consistently struck down by the Courts.

United States v. *De Jesús Boria*, 518 F. 2d 368, 371 (C.A 1, 1975).
Miranda v. *United States*, 255 F. 2d 9, 13–17 (C.A. 1, 1958).
Carpintero v. *United States*, 398 F. 2d 488, 490 (C.A. 1, 1968).
United States v. *Ramos Colón*, 415 F. Supp. 459 (D.C.P.R., 1976).
United States v. *Valentine*, 288 F. Supp. 957 (D.C.P.R., 1968).
United States v. *Mirabal Carrión*, *140* F. Supp. 226 (D.C.P.R., 1956).

In *United States* v. *Valentine*, supra, former Chief Judge Hiram R. Cancio, who was joined in his opinion by Senior Judge J. B. Fernández-Badillo, stated as follows:

"It does not follow. . . that because proceedings in local courts are conducted in Spanish, proceedings in this court must also be conducted in that language. This court is not a local court of Puerto Rico. Rather, it is a United States district court, part of the federal judicial system, litigating cases arising under the Constitution and laws of the United States or by reason of diversity of state citizenship. Hence, the very reasoning which led the Supreme Court of Puerto Rico

to conclude that proceedings in the Commonwealth court need be conducted only in Spanish applies in reverse to justify conducting proceedings in this court in English. Just as Spanish is 'the language of the Puerto Rican people' (*People* v. *Superior Court*, supra), the United States has from the time of its independence been an English-speaking nation. Although the American population has included occasional enclaves of foreign-speaking peoples, there has never been any tradition of official bilingualism, such as prevails in countries like Canada, Belgium, Switzerland or India. The past history of the United States discloses no more than occasional minor and temporary accommodations to the language preferences of foreign speaking peoples where they comprised a substantial segment of the original population of newly acquired area. But no Continental American court, federal or state, has ever conducted its proceedings in any language other than English. Thus, while it was proper for Congress to recognize from the beginning Puerto Rico's uniqueness among newly acquired territories, and not force English here as the official local language (as it could have done before Commonwealth status was agreed upon), it is equally proper that this court, being a federal rather than a local court, conduct its proceedings in the English rather than the Spanish language. As the Commonwealth Supreme Court recognized, the language requirements of §§ 864 and 867 [48 U.S.C.] 'are in agreement with and in line with the tradition that the judicial proceedings throughout the whole federal jurisdiction be conducted in the English language.'

"Indeed, it is difficult to conceive how this court could remain a viable part of the federal judicial system if proceedings here were conducted in Spanish. The basic civil function of the federal district court 'in offering an opportunity to non-residents of resorting to a tribunal not subject to local influence' . . . would be conpromised and unreasonably restricted here, were litigants forced, in order to avail themselves of the facilities of this court, to litigate through interpreters in a language other than English. Similarly, this court's function as to forum in this district for the vindication of federal criminal laws and the resolution of civil controversies to which the United States is a party would be compromised were the Attorney General of the United States unable to appear here personally on the Government's behalf unless he were conversant with Spanish, and were he limited by similar considerations in designating a member of his staff to appear. There would also be an anomalous limitation, unique within the federal system on judges from other districts who could sit here by designation when needed. Moreover, the statutes which this court applies are (except in those instances where Commonwealth or foreign statutes are at issue) written in English. The consequent necessity of phrasing an indictment or civil complaint in Spanish upon the basis of a statute written in English would manifestly lend itself to the strong possibility of injustice through distortion of meaning in translation. Similar possibilities of injustice would arise on appeal, where the entire record would have to be translated back into English. Finally, this Court, would be effectively insulated from the body of law developed throughout the rest of the federal system, since the opinions of all the other federal courts and the legislative histories of all federal enactments are published only in English.

"These considerations are not counterbalanced by any prejudice to litigants arising from the English language requirements. There is no real risk of litigants being tried by juries unable to understand the evidence since if any venirement lacks sufficient facility with English to render competent jury service, they can be and are eliminated on voir dire. . . . While some of the criminal defendants here are tried in a language they do not understand, the problem is not unique to this district; the situation arises in other districts as well, although concededly not to the same extent as it does here. A defendant's right to a fair trial, however, is personal not collective; a non-English speaking defendant could not be thought to be the less prejudiced if he is tried in a district where few defendants are in the same situation than if he is tried in a district where many are. It is thus no more of a constitutional violation to try non-English speaking defendants in English in this court than to try other non-English speaking defendants in English in any other Federal district court." 288 F. Supp. at 963-965 (citations and footnotes omitted).

An analysis of the proposed legislation should cover three different aspects: constitutional, policy and practical. For obvious reasons, the possible issues raised by the constitutional and policy aspects shall only be briefly mentioned. However, I will cover in detail the practical questions which I foresee.

1. Possible constitutional issues raised by this legislation:

a. Is there an official constitutional language of the United States which by implication is mandatory in the proceedings of any of its branches of government?

b. What is the nature of the District Court for the District of Puerto Rico? See *United States* v. *Ramos Colon*, supra. If it is an Article III court, is Congress not required to treat it in the same uniform manner as the rest of the Federal judicial system? If it is an Article III court, can Congress impose on the judges of the District of Puerto Rico requirements for holding office which are different from (in fact higher than) the judges of other District Courts? Even if it is not an Article III court, considering the life tenure provisions of the District of Puerto Rico judges, can the requirements for holding office of the present judges be varied?

c. Does the creation of separate petit and grand jury wheels for Spanish speaking and non-Spanish speaking groups meet due process and equal protection requirements? What cases would be indictable by the Spanish grand jury, and which would be indictable by the English grand jury? Would it depend on the witnesses, the type of crime, the possible outcome, the United States Attorney's preference, etc.?

2. Under the heading of Policy questions the following come to mind:

a. Does the establishment of non-English as the official language in a formal proceeding of the United States create a valid precedent in terms of other courts, instrumentalities and agencies of the United States? Can not the same arguments for the use of non-English in a District Court be equally applicable to appeallate proceedings before the Court of Appeals or the Supreme Court, or to legislative or executive proceedings? Should not the laws of the United States be enacted and published in non-English also?

b. Would the other geographical areas within the jurisdiction of the United States where there are substantial non-English speaking populations be subject to this same type of differential legislation?

3. Practical problems:

The use of Spanish in substitution for English as an official language in the United States District Court for the District of Puerto Rico would effectively eliminate this Court as a part of the Federal judicial system.

If Spanish were substituted for English, the case load would multiply to such an extent that even with the proposed increase to seven district judges, the individual judges will be totally ineffective. This would be brought about not only because of the tremendously increased case load which is foreseen, but because this legislation would bring about a duplication in the routine work of the judge, even, without a single additional case being filed. I am referring specifically to the provision in Section 3 to the effect that the written orders and decisions of the court shall be in both Spanish and English. Even today with only three district judges, there are literally hundreds of orders that issue daily, ranging in length from a brief word or two to tens of pages long. The disastrous consequences of this proposal in terms of wasted manpower and the fomentation of bureaucracy can not be fathomed. And quite obviously, having translators would only alleviate some of the extra work of the judges, who in any event have to check the work of the translators.

As previously indicated, the United States District Court for Puerto Rico has one of the highest case loads per judge in the federal court system. The four new judgeships which are being created to alleviate this situation would be rendered obsolete before the Omnibus Bill is passed. Not only would further additional judges be required, but the new Courthouse Building, now obsolete, would be totally inoperable.

It is difficult to visualize what work tools would be available to the judges of the District of Puerto Rico. All of the texts and authorities available in the Federal field, commencing with the statute books, the various authoritative works, the decisions, jury instructions, etc., are in the English language. How this might be overcome on a workable day-to-day manner without causing interminable delay, is impossible to foresee.

The cost of appeals, as well as the time required to complete an appeal would be substantially increased. It becomes a relatively simple matter to have to translate some exhibits from Spanish to English, as is the case in the typical appeal today, compared to the enormous burden of having to translate a full record of a trial. Appeals from Puerto Rico, which today take longer to complete than those of the other District Courts in this Circuit, would be even further delayed if the proposed bill is enacted.

In a related vein, two sets of Court Reporters would have to be employed, one for Spanish and one for English, as we are unaware of the existence of any bilingual reports. In fact, the reporting machines for the two languages are different.

This move will effectively isolate the District Court for Puerto Rico from the rest of the Federal judiciary. We would no longer be in consonance with the rest of the uniform system. I am not preaching uniformity for its own sake. We would

be removed from any help we might be able to receive from being part of this system in the way of visiting judges, logistic support, and much of the practical help that can be given by the Administrative Office, etc.

Several of the important agencies that practice before us would face difficult logistic problems. For example, excluding consideration of the black lung-cases, the volume of Social Security litigation in our District is the highest in the Nation. In the year ending December 31, 1977, 679 Social Security cases were filed in our Court. That constitutes 31.6 percent of the total number of civil cases commenced last year. Because of this enormous volume, our Social Security cases are all briefed by Justice Department Attorneys in the Continent. At present, delays of six to nine months in filing briefs are not uncommon. If reliance would have to be placed in the San Juan United States Attorney's Office because of their knowledge of Spanish, the volume of work added to that already overburdened staff would bring about interminable delay and would cause a travesty of justice.

Some very active members of our Bar would be in effect disbarred, and the English speaking residents of Puerto Rico, of which there are a substantial number, would be further discriminated against. The Commonwealth courts have already barred all litigation except in Spanish and they refuse to provide any translators for non-Spanish speaking parties. The Supreme Court of Puerto Rico has discontinued translation into English of its decisions, a practice which was in effect for over sixty years.

I have heard unsupported arguments to the effect that this legislation will make this District Court of Puerto Rico more accessible to both the Bar and to the public. Statistics clearly show that this Court is anything but inaccessible to the public. Our case load has grown from 668 filings in 1950, 703 filings in 1960, 1205 filings in 1970, to 2355 filings in 1977. The membership in our Bar has grown in a proportionate manner. For example, in 1950 there were 30 admissions to the local bar (a mandatory bar) and 24 admissions to the Federal Bar. This parallel growth continued in the following decades. In 1960 there were 97 admissions to the local bar and 70 admissions to the federal bar. In 1970, 464 admissions to the local bar and 114 to the federal bar. Last year with 388 admissions to the local bar there were 197 admissions to the federal bar. Interestingly, in the present year, there have been 138 admitted to the local bar and 99 admitted to the federal bar. Statistics show that in excess of 50% of the attorneys admitted to practice in Puerto Rico are also admitted to the Federal Bar. See Appendix B. Although I do not have final figures, I believe this compares favorably with the situation in other districts. Furthermore, the records of the Court show that geographically, members of the federal bar are found throughout the entire Island.

It has also been my experience that the composition of our jury panels follows a similar pattern in terms of both occupational and geographical distribution. By way of an example, the last panel used by me in a criminal trial, contained members from 19 different municipalities from around the Island with occupations as diverse as factory workers, taxi drivers, social workers, electrician, clerk, engineer, truck driver, receptionist and housewife. See Appendix C. This particular panel was randomly selected and from my experience I opine that its composition may be considered as representative of jury panels in our Court.

There are sundry other problems raised by this legislation but I will not further belabor this Committee. I can not however, leave without emphasizing as strongly as I possibly can, that in my opinion, the passage of the proposed bill would bring about disastrous consequences to our Court. I am proud to have been a part of an institution which has accomplished much for the People of Puerto Rico and which is looked upon by our People as a symbol of Justice. This has not sat well with some small segments of our society. These persons have without success sought the elimination of the Federal Court from Puerto Rico. I am sorry to say that the end result of the present legislation, although inadvertent, may be to bring about indirectly what has not been accomplished directly.

APPENDIX A

ADMISSION OF ATTORNEYS TO LOCAL AND FEDERAL BARS

Year	Local court	Federal court
1950	30	24
1960	97	70
1970	464	114
1977	388	197
As of July 30, 1978	138	99

APPENDIX B

ADMISSIONS

	Local bar (mandatory)	Federal bar
1950–60	559	305
1960–70	1,747	754
1970–77	2,031	1,250
1978	138	99
Total	4,475	2,408

Note: Percentage of attorneys being admitted to local and Federal bars: 53.8.

APPENDIX C

COMPOSITION OF JURY PANEL CALLED ON JULY 14, 1978

Hometown:	*Occupation*
Río Piedras	Housewife.
Lajas	Clerk.
Río Piedras	Factory worker.
Adjuntas	Carpenter.
Bayamón	Social worker in commonwealth agency.
Mayaguez	Social worker in commonwealth agency.
Ponce	Mechanical engineer.
Luquillo	Secretary.
Humacao	Government employee.
Bayamón	Factory worker.
Humacao	Electrician.
San Germán	Truck driver.
San Juan	Housewife.
Carolina	Mail handler.
Carolina	Accounting clerk.
Cayey	Electrician.
Toa Baja	Retired from Armed Forces.
Arroyo	Factory foreman.
Bayamón	Security guard.
San Juan	Retired Federal employee.
Toa Baja	Secretary.
San Juan	Housewife.
Bayamón	Receptionist.
Carolina	Tax analyst.
Humacao	Clerk-typist.
Barceloneta	Construction worker.
San Juan	Store manager.
Río Grande	Taxi driver.
Carolina	Racetrack pool agent.
Dorado	Taxi driver.
Río Piedras	Store manager.
San Juan	Factory worker.
San Juan	Engineering manager.
Ponce	Pharmacist assistant.
Trujillo Alto	Travel agent.
Río Piedras	Accountant.
San Juan	Secretary.
Utuado	Factory worker.
Bayamón	Truck driver.

TESTIMONY OF HON. FRANK M. COFFIN, CHIEF JUDGE, U.S. COURT OF APPEALS, PORTLAND, MAINE; HON. JOSE V. TOLEDO, CHIEF JUDGE, U.S. DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO; HON. JUAN R. TORRUELLA, JUDGE, U.S. DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

Judge COFFIN. If you wish, Mr. Chairman, I will lead off and more or less set the stage.

I have skimmed the written comments of my brothers and feel that they complement each other quite nicely, so I will not read to you what you have already read but I will summarize and give emphasis to several points.

Our interest, speaking now for my colleagues on the circuit court who are also, as you know, the Judicial Council of the First Circuit, in this legislation stems from two sources.

First of all, referring to our interest as a court, the appeals from Puerto Rico have increased steadily over the past 10 years. Judge Torruella's statement refers to this also, but Puerto Rican appeals have risen from 13 percent of our total appeals 8 years ago to as high a percentage as 31 percent at the present time.

Bear in mind that Massachusetts as a district has twice as many people as Puerto Rico.

Our second source of interest is as a Judicial Council. We are charged with general oversight of judicial administration in Puerto Rico, and I think as Chief Judge Toledo would testify, the two of us are constantly in touch with each other about the needs of that court for personnel, for additional judges, visiting judges, and new facilities.

Our concern in this legislation is about 4 years old. We have been concerned since 1974 with the problems of trying to reconcile two things, a nationwide English speaking Federal court system with a community which is largely Spanish speaking.

Three years ago we commissioned a study by a young lawyer in Boston, Miss Susan Garsh, who went over to Puerto Rico and compiled a report, a copy of which I sent you, Mr. Chairman, 3 years ago.

That report is not by an expert, it is not by a foundation. It is not current. However, it is the only thing of that sort that exists.

I understand only through hearsay that the Department of Justice is interested in passing this legislation at this time. If it has taken a position on this matter it is news to us. No member of the Department of Justice has ever communicated to us, asked our views, or as far as I know conducted any kind of a study.

There is only one thing I can say without qualification in this testimony and that is that the kind of study done so long ago by Miss Garsh must be done currently with the kind of expertise and authority that only adequately funded experts in the field can bring to such a task, for it's a new task.

It is not like appropriating additional money for housing or for schooling. It's in terms of the job to be done; we have never done it, and I am candid in saying that I am not confident, as confident today

as I was 4 years ago that we can do it well; that is, that we can make Spanish available without cheapening and diluting the quality of justice being administered.

My members on the Judicial Council who agree with what I have submitted to you wholeheartedly are thoroughly sympathetic with the desire of those who are brought up in a Spanish culture and who are most comfortable in Spanish to have important affairs in their lives settled in the language with which they are most familiar.

But, at the same time, we realize the immense sophistication of the Federal system of laws, statutes, and regulations which is the chief part of our grist in Puerto Rico.

Now what I will now try to communicate is a series of problem areas to which we have paid far too little concern. I am not just indulging in sour grapes when I say we should do more to understand these problems and how they may best be dealt with, nor am I trying to use as a delaying tactic the frequently resorted to advice that something needs to be studied.

I know perfectly well that many things are studied to death. But this is a unique proposal as to which we as a country have had no experience. Some other countries have had experience. I think we would do well to see what that experience has been in England, in Canada, Switzerland, and undoubtedly some other countries.

But the fact remains that all of the things that we are going to talk about were rather cavalierly brushed aside when this bill got annexed to the bilingual courts legislation in the Senate, without, so far as I know, any hearings or debate.

Certainly the individual judges, and we as a Council and the Judicial Conference, were caught wholly by surprise.

I would say, and this need not be said to any of you behind your committee bench, but many who are uncritically enthusiastic about enacting this special legislation right now are ignorant of two basic facts.

One is that we do have a very good court system in Puerto Rico. My two brothers sitting with me are not the only judges in the Commonwealth. The Commonwealth court system is a highly sophisticated system based largely or to a considerable extent on civil law. But also applying, of course, Federal constitutional principles.

Their system consists of local judges and superior court judges and a Supreme Court. The building housing the San Juan division of the superior court is a modern building in San Juan, that is far more sophisticated than anything the district of Massachusetts has, using equipment that is far more sophisticated than any of our district judges in my circuit uses. Their court system is under the leadership of Chief Justice Jose Trias-Monge, and is increasing in its efficiency.

Many who are for this legislation feel that what we are discussing is the proposal of bringing a court that speaks Spanish to Puerto Ricans. This Commonwealth court system I have talked about is, of course, entirely Spanish speaking. It is not English at all.

Our second observation which you know but many others don't know, is that every litigant and every witness who is unable to communicate in English has an interpreter.

I have listed five problem areas and I will not speak in any detail about them, but just indicate the kind of problem each area involves.

The first problem area is the impact on the judge himself. If it is true that there are lawyers who are prevented from going into Federal Court today because they do not feel at home in English, to the extent that is true, then if they may try a case in Spanish in Federal Court there will be an influx of lawyers who are not as well equipped to understand statutes, regulations, case law, the nuances which make dealing in Federal law a highly intricate business.

The judge presiding over cases with lawyers not at home in English will have a rather large load put upon him.

A second area is the impact on the court. As my colleagues will tell you, this court in Puerto Rico has mushroomed from a court of one article I judge, when I came on our court, 13 years ago, to three article III judges. In the current legislation, which we are hoping will eventually emerge there will be four additional judges, so going from one nontenured judge to seven tenured judges in the course of a little over a decade shows the extent to which this institution has grown.

The number of cases since 1965 has quintupled. The Garsh report estimates that if Spanish is applied to both civil and criminal cases in the Federal court, the growth of litigation there will increase between 100 and 400 percent.

Even if we cut her maximum estimate in half, my extrapolation from her report is that we would need from four to seven more judges, in which case the district of Puerto Rico would have, with half the population of Massachusetts, 150 percent or 50 percent more judges than the district of Massachusetts. This may not be bad, but my point, Mr. Chairman, is that as you consider this legislation, bear in mind that you must be willing and able to sell to the floor the fact that we need a much richer density of judges and other personnel in a bilingual court than we do in other courts.

My third area is the problem of having two jury wheels, and I won't talk about the constitutional problem.

We already have a problem, as you know, of people contending that we don't have a fair cross section because some people don't speak Spanish.

Judge Torruella in his testimony is going to speak from his personal experience. All I can say is the Jury Committee of the Judicial Conference which has given some attention to this problem has raised the question as to whether it would be constitutional to limit one jury panel to English cases and another jury panel to non-English cases.

A fourth problem area and one I can speak about with some feeling is the problem of appeals.

If this legislation were to be passed, we would find pretty surely that there would frequently be changes in counsel, that is, that Spanish-speaking counsel would appear at the trial level and English-speaking counsel at the appellate level. Moreover, the time and cost of translating transcripts is a ponderable difficulty that deserves your attention.

I have put the figures in my statement. But as you will see there, a 2-day trial might be transcribed at the present time by a court reporter from English to English in 3 days. At a rate of 8 to 10 pages a day for translation from Spanish to English, you would go from 3 days to a minimum of 16, maximum of 31 days to get a transcript in English.

The cost of the transcript would, we say, probably quadruple, assuming at the moment that a page of transcript costs for an original about $1.50 for a court reporter doing it in English, but the cost of getting a page transcribed is $6 to $7. So a 1,000-page transcript of a criminal trial is $7,000, in addition to what it would cost in any event. We have a question as to who would pay that. This is something that the committee or a study should consider, under what circumstances should the Government pay for this, under what circumstances should private individuals?

Finally, in terms of appeals, in addition to cost and time and change of counsel, a good part of our business is considering emergency matters, that is, stays pending appeal, injunctions pending appeal, requests for bail pending appeal.

Mr. EDWARDS. Do you have magistrates there?

Judge COFFIN. We have magistrates.

Mr. EDWARDS. How many do you have?

Judge TOLEDO. Two.

Mr. EDWARDS. Thank you.

Judge COFFIN. For us to rule on these matters before the appeal is heard. In the normal course we need to have transcripts and this would delay us.

Mr. MCCLORY. How many magistrates are there in Puerto Rico?

Judge COFFIN. Two, I think we hope for a third.

Judge TOLEDO. We hope for a third but we don't have him yet.

Judge COFFIN. Finally, in addition to the problems for the trial judges, the impact on the court and the jury problems, the problems with appeals, we have the basic gut problem of logistics, personnel, and space.

My statement covers this. I will merely say on this that Judge Toledo and Judge Torruella and Judge Pesquera also have concerned ourselves for the past several years with our building problem in Puerto Rico.

We have a brand new building that was built for the three judges. Unfortunately, we are soon to have seven judges. That building has been idle for a year. It is going to be idle for a lot longer time until we have it restructured to take care of the enlarged personnel which we contemplate having onboard at the moment.

But the problems of getting trained translators, trained reporters, problems of getting additional space and equipment, are things that should go into the calculus as we consider seriously affording Spanish to litigants in this court.

I would just want to conclude by saying, as I said on the last page of my statement, that this is an issue of tremendous attractiveness, it is an issue of tremendous political appeal. Some of the supporters of this bill at the present time support it because they think it's a step toward greater autonomy and separateness.

Others support it because they feel it will satisfy the cultural aspirations, but within the traditional framework of the Federal-State relationship.

We are, of course, not concerned with that. That is your ultimate decision, but we are concerned with the basic problem of providing justice with as much competence as we can muster without excessive cost and delay.

This court has been a source of great concern to me and my Council. We have worked hard with Judge Toledo getting visiting judges in just as much as we could, but still it is cursed with one of the greatest backlogs in the country and one of the greatest incremental expansion rates of any court in the country.

It is in a sense a fragile court and, therefore, we urge you to go forward into this field with as much delicacy and prudence and wisdom as any committee in this House is ever called upon to use.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Judge Coffin.

I believe we will withhold questioning the witnesses until all three have had an opportunity to make their statements.

Judge Toledo, we welcome you.

Judge Toledo is the Chief Judge of the U.S. District Court for the District of Puerto Rico.

Proceed, sir.

TESTIMONY OF HON. JOSE V. TOLEDO

Judge TOLEDO. Thank you, Mr. Chairman and members of the committee, Congressman Corrada.

The reason why I asked Judge Coffin to speak first is because I felt he was going to cover most of the points I was going to cover; therefore, I am just going to mention some other areas.

I would like to state for the record what my official position is.

I believe that this question ultimately presents a question of policy in regards to Puerto Rico, which is to be determined by the U.S. Congress.

To the extent that this matter presents a question of partisan politics in Puerto Rico, I cannot give you my personal opinion.

As I stated in my appearance back in 1974 before the Senate subcommittee, I feel that due process for criminal defendants is best guaranteed by conducting the proceedings in Spanish when it so happens that Spanish is the language best understood by the defendant, but I don't want to be misunderstood.

Let me state for the record that I have not concluded that due process, the due process clause of the Federal Constitution, mandates that criminal proceedings be conducted in the vernacular language of the defendant.

I am merely stating my conviction as a lawyer and as a judge that the due process clause is best implemented by making the criminal proceedings more meaningful to the defendants by conducting them in their language, their tongue, when that is possible within the Federal judicial system.

Nevertheless, I must present to the subcommittee some practical problems that these bills may cause for the entire Federal judicial system.

Most of them have been mentioned by Chief Judge Coffin.

I am worried over and above the ones mentioned by Judge Coffin, that Senate bill 1315 does not limit its provisions to criminal cases. I think this bill should be limited to criminal cases if the committee feels that it can overcome all of the practical problems that this bill presents.

Furthermore, I believe that the bill does not properly define the term "interest of justice," which is the term used in the bill which allows the judge to make a determination whether to allow the case to continue in English or in Spanish.

Yet, it is provided in this bill that in all cases, at the apparent option of the party, the initial pleadings may be either in English or Spanish. I ask the subcommittee, did the Congress mean including pragmatic consideration within the concept of interest of justice?

Can the court in the interest of justice consider whether it is prepared to handle the additional clerical burden of receiving documents in two languages at the option of the filing party? Or the need to have translations automatically done when the initial pleadings are filed in Spanish?

I think it is most desirable to obtain legislative guidelines as to which elements ought to be considered when determining whether in the interest of justice, and I quote:

"The proceedings are to be conducted in Spanish."

Then there is a problem of the civil cases. We have statistics from the Commonwealth superior court to the effect that approximately 13,000 cases filed in that court are prospective diversity cases that could be filed in our court.

I get scared when I think that 13,000 cases now filed in the Superior Court of Puerto Rico may be filed in our court, and I know what that would do to our calendar and to our judges and to our whole judicial and para-judicial personnel.

I am not saying that I feel that 13,000 cases will be filed in our court, but these 13,000 cases qualify to be filed in our court. I am talking about statistics back in 1974 which are the latest that we have. I don't know how high those statistics are right now.

I am also worried about the translation portion. It seems to me that the bill is dealing with the type of translation that is now used in the United Nations. I am not certain that this is the best type of translation that we can use in the court. One of the reasons for that is that many times you may translate literally one word from English to Spanish and it may be correct literally, but not in a legal sense.

If you use the United Nations system, there wouldn't be any way for the judge who presides over the trial to be able to correct the translation, because this will be going directly from the translator to the defendant or to the witness or to whoever it is going to. But the judge will not be listening to it as we do now.

Now, every translation is done in open court, in a loud manner, where both the defendant, counsel, witness, jury and the judge is hearing it, and there are many times when we have to stop the proceedings to correct a translation and get all of the parties together as to which is the correct translation of a term or a sentence.

Of course, there is the problem of costs, which I believe Judge Coffin already covered, and I believe that is a grave problem, and also the question as to how many judges this court would need if all of these 12,000, 13,000, or 14,000 cases were filed in our court.

I believe my statement goes in detail into all of these problems, Mr. Chairman, which includes appeals to the U.S. Court of Appeals for the First Circuit. I can just imagine a 6-week trial that has been tried in Spanish, the transcript of that case will take at least 3 months,

and I can just imagine again the translators translating that record for the benefit of the court of appeals.

Not only that, I cannot guarantee the court of appeals that that translation is a correct one because I have not monitored it.

We have, as Judge Coffin stated, many cases where we have injunctions, bail, interlocutory injunctions and in general emergency situations that have to be appealed to the court of appeals. I can just imagine the court of appeals having to wait for the translation of the transcript in order to deal with the problem at hand.

I would suggest, Mr. Chairman and members of the committee, that if all these problems cannot be solved before the enactment of this bill that sections 3 and 4 be extricated from the rest of the accompanying bills and to altogether postpone the enactment, and at the same time a more detailed study be made of the practical problems posed.

I repeat, my official and personal position is that this section ultimately presents a question of policy in regards to Puerto Rico which is only to be determined by the U.S. Congress.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Judge Toledo.

We welcome now Judge Torruella.

You may proceed.

TESTIMONY OF JUDGE JUAN R. TORRUELLA

Judge TORRUELLA. Thank you, Mr. Chairman.

My name is Juan Torruella, and I am U.S. district court judge for the district of Puerto Rico.

I would like to thank the committee for the opportunity of being heard on this matter.

My remarks will be limited only to sections 4 and 5.

I am sorry to say that I oppose this legislation because I know that this is legislation which is dear to our Congressman Corrada, and I am afraid that my position may be misinterpreted, but I think this legislation presents some fundamental issues and may involve whether the district court of Puerto Rico will continue to be a viable part of the Federal judiciary.

It is my opinion that these proposals, although without any doubt well intentioned, will cause irreparable harm to the U.S. District Court for Puerto Rico, will be impossible to implement, and are subject to or may be subject, I should say, to serious constitutional challenge.

It goes without saying that no court of justice worthy of such a denomination can operate under a system wherein a criminal defendant is unaware of the nature of the proceedings against him or is unable to intelligently aid in the defense of his case.

If the system we presently use in Puerto Rico were defective in any such sense, I could not in good conscience oppose this proposal.

But I believe this is not the case. The present system of translation that we use in the District Court of Puerto Rico is eminently fair and fully meets all of the requirements of due process.

This is not a theoretical statement, but one based on observation through 20 years of practice of law as an attorney and as a judge in the

District Court of Puerto Rico. I have not seen any facts, and I emphasize "facts" that lead me to believe otherwise.

In contrast to this, our district court as part of the Federal judicial system has consistently been recognized with a record of 80 years of service in contributing to the administration of justice in Puerto Rico. Notwithstanding severe manpower limitations throughout our history, our court has performed as a viable and integrated part of the Federal judiciary.

Although I am sure you are familiar with some of these statistics I am going to quote, I think they are important in considering this subject.

In the year ending on June 30, 1977, each judge in our court terminated an average of 641 cases, compared to the national average of 384 cases per judge. As of December 31, 1977, there were 2,142 civil and 213 criminal cases filed before our court, an average of 714 per judge, which is well above the national average of 411 cases per judge.

Our judges averaged 50 full trials per year of both civil and criminal cases, which again exceeded the national average. In the first circuit, appeals from our district constituted 26.7 percent of the appeals from the district courts and 20.6 percent of all appeals to the court of appeals.

I am not trying to gain praise for our district, but I am trying to show to this committee facts that I believe show beyond any doubt that the present system that we have in the District Court of Puerto Rico works and has worked and will continue to work efficiently, and will continue to provide an adequate forum for the litigation of Federal controversies in the District of Puerto Rico.

Furthermore, we have on numerous occasions had challenges to our system, both as regarding the jury composition and as to the manner in which the language is used in the court, and they have consistently been sustained by the various courts before which this matter has been raised. I cite these in my written statement, and I don't believe there is any need to burden the committee with going into that subject.

I believe an analysis of the proposed legislation should cover three different aspects: constitutional, policy, and practical. I will not go into detail on the issues raised under the constitutional and policy aspects. I will just briefly mention what I believe are some questions which should be looked into.

On the constitutional area, I think one of the things that might be studied is whether there is an official constitutional language of the United States which by implication is mandatory in the proceedings of any of its branches of Government.

Mr. EDWARDS. If I might interrupt, Judge Torruella, we have a vote on the floor of the House, and we will recess for 10 minutes.

[A short recess was taken.]

Mr. EDWARDS. The subcommittee will come to order, and Judge Torruella, you may continue.

Judge TORRUELLA. Thank you, Mr. Chairman.

I was pointing out some of the questions that come to my mind in the area of constitutional matters that are raised by this legislation.

I would like to repeat briefly the first one I mentioned which was whether there is an official constitutional language of the United States which by implication is mandatory in the proceedings of any of its branches of Government.

Secondly, what is the nature of the District Court of Puerto Rico. This is something which perhaps has some relevance to this legislation. If the District Court of Puerto Rico is an article III court, is Congress not required to treat it in the same uniform manner as the rest of the Federal judicial system?

If it is an article III court, can Congress impose on the judges of the District of Puerto Rico requirements for holding office which are different from—in fact, higher than—the judges of other district courts?

Even if it is not an article III court, considering the life tenure provisions of the district of Puerto Rico judges, can the requirements for holding office of the present judges be varied?

Does the creation of separate petit and grand jury wheels for Spanish-speaking and non-Spanish-speaking groups meet due process and equal protection requirements?

What cases would be indictable by the Spanish grand jury, and which would be indictable by the English grand jury?

Would it depend on the witnesses, the type of crime, the possible outcome, the U.S. attorney's preference, et cetera?

Under the heading of "Policy Questions," the following come to mind:

Does the establishment of non-English as the official language in a formal proceeding of the United States create a valid precedent in terms of other courts, instrumentalities, and agencies of the United States?

Cannot the same arguments for the use of non-English in a district court be equally applicable to appellate proceedings before the court of appeals or the Supreme Court, or to legislative or executive proceedings?

Should not the laws of the United States be enacted and published in non-English also?

Would the other geographical areas within the jurisdiction of the United States where there are substantial non-English-speaking populations be subject to this same type of differential legislation?

I would like to go into the practical problems that I think are raised by this legislation.

Succinctly, I believe that the use of Spanish in substitution for English as an official language in the United States District Court for the District of Puerto Rico would effectively eliminate this court as a part of the Federal judicial system.

If Spanish were substituted for English, the caseload would multiply to such an extent that even with the proposed increase to seven district judges, the individual judges will be totally ineffective.

This would be brought about not only because of the tremendously increased caseload which is foreseen, but because this legislation would bring about a duplication in the routine work of the judge, even without a single additional case being filed.

I am referring specifically to the provision in section 3 to the effect that the written orders and decisions of the court shall be in both Spanish and English. Even today with only three district judges, there are literally hundreds of orders that issue daily ranging in length from a brief word or two, to tens of pages long.

The disastrous consequences of this proposal in terms of wasted manpower and the fomentation of bureaucracy cannot be fathomed.

And, quite obviously, having translators would only alleviate some of the extra work of the judges, who in any event have to check the work of the translators.

As previously indicated, the U.S. District Court for Puerto Rico has one of the highest caseloads per judge in the Federal court system.

I think it has been pointed out by other witnesses and I will not go into it in any detail, but even with the new judges that are contemplated in the omnibus bill, if this legislation is passed we would not have enough judges and not only that, but the new courthouse which, as has just been indicated, is already obsolete, would be totally inoperable.

One of the areas I think from a practical standpoint worries me the most in terms of this legislation, are the work tools that are available to a Federal judge, which would not be available or would be available at great difficulty to use in the District Court of Puerto Rico if this legislation is passed.

In the first place, starting with the laws of the United States, they are all published in English, the cases of both the district, the appellate, and Supreme Court, they are all in English. All of the various texts published by the experts, all of the work tools which are provided to us by the administrative office such as jury instructions, the bench book, et cetera, all of them are published in English.

Now, I am not going to sit here and tell this committee that it is impossible to translate all of these either at one time or as they are printed, et cetera.

But, I am saying that unless this were done, if it were required of us to do it on a piecemeal basis as we went along, not only would it require a tremendous amount of time but in any event they would not be official translations and would present additional and interminable work for the judges on a day-to-day basis and, I emphasize again, without the filing of one single additional case, because of this legislation.

The cost of appeals and the additional time required has already been more than adequately covered, so I will not dwell on this in any further length.

Another area that very much preoccupies me is I feel this legislation will effectively isolate our district from the rest of the Federal judiciary. To begin with, we would no longer be in consonance with the rest of the uniform system.

We are, in effect, being treated differently, the District Court of Puerto Rico is being singled out by this legislation as being treated in a different manner than the rest of the Federal judiciary. I am not preaching uniformity for uniformity's sake; it has very practical implications.

We can forget about any aid from visiting judges. I am not going to sit here and say there are no bilingual judges in other courts because I happen to know at least two in the District of Texas.

I think one in Texas and one in New Mexico, and I am sure there are more than the ones I am familiar with but, of course, these judges have their own districts to take care of and as a matter of policy the only judges that are assigned usually to our court are judges usually from our district, from our circuit or judges who are senior judges or do not have the type of caseload we have.

So for all practical purposes, we would be without the very useful aid I believe of these visiting judges who have led us in the past in trying to reduce our caseload.

Logistic support from the various agencies that aid the courts, including the administrative office, I think would be greatly curtailed because of the factors I have already indicated.

Several of the important agencies that practice before us would face difficult logistic problems.

For example, excluding consideration of the black lung cases, the volume of social security litigation in our district is the highest in the Nation.

In the year ending December 31, 1977, 679 social security cases were filed in our court. That constitutes 31.6 percent of the total number of civil cases commenced last year. Because of this enormous volume, our social security cases are all briefed by Justice Department attorneys in the continent.

At present, delays of 6 to 9 months in filing briefs are not uncommon. If reliance would have to be placed on the San Juan U.S. Attorney's Office because of their knowledge of Spanish, the volume of work added to that already overburdened staff would bring about interminable delay and would cause a travesty of justice.

Some very active members of our bar would be in effect disbarred, and the English-speaking residents of Puerto Rico, of which there are a substantial number, would be further discriminated against. The Commonwealth courts have already barred all litigation except in Spanish.

This was not the law or practice until, I think, a decision was entered somewhere around 10 years ago, I am not exactly sure, and they do not provide any translation for non-Spanish-speaking parties.

The Supreme Court of Puerto Rico has discontinued translation into English of its decisions, a practice which was in effect for over 60 years.

I have heard unsupported arguments to the effect that this legislation will make this District Court of Puerto Rico more accessible to both the bar and to the public. Statistics clearly show that this court is anything but inaccessible to the public.

Our caseload has grown from 668 filings in 1950, 703 filings in 1960, 1,205 filings in 1970, to 2,355 filings in 1977.

Our indications are this year will be even higher.

The membership in our bar—I am talking about the district of the Puerto Rico bar—has grown in a proportionate manner.

I don't have the last figures, but I have several figures I believe are fairly accurate.

For example, in 1950 there were 30 admissions to the Puerto Rico, a mandatory bar; in other words, to practice law in Puerto Rico you have to belong to the local bar association, and there were 24 admissions to the Federal bar.

This parallel growth continued in the following decades. In 1960 there were 97 admissions to the local bar and 70 admissions to the Federal bar. In 1970, 464 admissions to the local bar and 114 to the Federal bar.

Last year with 388 admissions to the local bar there were 197 admissions to the Federal bar. Interestingly, in the present year, there

have been 138 admitted to the local bar and 99 admitted to the Federal bar.

Statistics show that in excess of 50 percent of the attorneys admitted to practice in Puerto Rico are also admitted to the Federal bar. I don't have the final figures. I have made an effort to find how this compares with the other districts in our circuit, for example.

I cannot quote official figures because I don't have them, but from talking to the different districts on this it is my impression, I intend to follow up on this and perhaps submit these figures to the committee, it is my impression that membership vis-a-vis the local Puerto Rico district is higher or at least as high as the other districts in the first circuit and it would seem to me this would lead to the conclusion that there has been no discouragement for any reason an certainly not by reason of the language of the members of our bar.

I would also like to point out that our records in the district court show that geographically the members of the Federal bar are found throughout the entire island. In other words, not limited to one specific area.

It has also been my experience that the composition of our jury panels follow a similar pattern in terms of both occupational and geographical distribution. By way of example, I just picked that last criminal case I had, and it contained members of 19 different manicipalities from around the island of Puerto Rico with occupations as diverse as factory workers, taxi drivers, social workers, electrician, clerk, engineer, truck driver, receptionist and housewife.

I have appendix C which has complete information on this matter.

I might say I have conducted these surveys periodically, because at different times I have corresponded with the circuit court on this matter and with other members of the judiciary in Puerto Rico.

Frankly, when I became a judge I was a little disturbed by this in particular as I had no facts really to go on, so I was particularly attentive in both picking juries and in picking the big panels we do periodically, and I was particularly attentive in inquiring as to what the distribution was both in terms of geography and in terms of occupation.

I can only say that I have been very pleasantly surprised because I think our juries fully meet geographical and occupational distribution in Puerto Rico.

I don't really know the reason, except I think sociologically, and this is certainly not my field, so I am only guessing, I believe there has been such an amount of mobility in Puerto Rico between Puerto Rico and the mainland, in addition to the fact a lot of people have been exposed to the service, we have a lot more people in Puerto Rico that qualify as bilingual than we think or that the statistics might show.

There are many other problems that are raised by this legislation. I think most of them are covered in my statement, and I will not belabor this committee any further, except that I would like to say that I very strongly believe that the passage of this bill, particularly in the way in which it is phrased, will have very serious, and I am afraid, disastrous consequences to our district court.

I think it has been emphasized by both Judge Coffin and Judge Toledo that no study has been made. It could very well be that a

scientific study could prove me to be incorrect, and if I were incorrect I would certainly have no qualms about retracting my position.

But even the unscientific, let's call it, studies that I have seen do not show to me the system we have in Puerto Rico is defective to any extent, and this type of legislation can have such an impact on our court that it would seem to me that this study is absolutely imperative before any position is taken on it.

Furthermore, I would like to point out something I am sure is obvious to the committee. If this legislation passes in its present state, and it is later discovered it was a mistake, it is a mistake that cannot be corrected because I cannot think of anything that would cause more turmoil both in and out of our court in Puerto Rico than having this legislation passed and then having later legislation retracting this type of a procedure.

So, my statement is to the effect that I urge this committee very strongly to study this matter very carefully, and I thank you very much for allowing me to be heard.

Mr. EDWARDS. Thank you very much, Judge.

The gentleman from Missouri, Mr. Volkmer.

Mr. VOLKMER. Thank you, Mr. Chairman.

I am sorry I was not here at the very outset. Under the present system that is used in the Federal court system, what is the procedure which is used in a criminal case if you have a Spanish-speaking-only defendant?

Judge TOLEDO. At this time we have, if the witness testifies in Spanish, the translator will sit right next to him and will translate to him the question that is posed in English, translate it to Spanish.

The witness will answer the question in Spanish and then the translator will translate into English for the record.

Mr. VOLKMER. Just a moment now. I have a witness and he is Spanish speaking.

Judge TOLEDO. That is right. The U.S. attorney or defense counsel will ask the question in English.

Mr. VOLKMER. Right. I have a defendant that is Spanish speaking only.

Judge TOLEDO. That is correct.

Mr. VOLKMER. And I am representing him. The attorney speaks only English.

Judge TOLEDO. That is correct.

Mr. VOLKMER. OK. Now, I have asked a question in English. The witness is to respond in Spanish, so the question first has to be interpreted to the witness.

Judge TOLEDO. That is correct. The question of the attorney is translated to the witness.

Mr. VOLKMER. What happens next?

Judge TOLEDO. The witness answers in Spanish and the interpreter translates into English for the record, actually for the record, because the defendant understoood his answer in Spanish. This has the advantage that the judge is present, listens to the translation, both ways, and if there is anything wrong in the translation, he can correct it or at least may try to get the attorneys to agree on a correction.

Mr. VOLKMER. What happens if the witness is English speaking?

Judge TOLEDO. Then the question is asked in English and there is no translation. I am sorry, there is translation.

Mr. VOLKMER. There better be.

Judge TOLEDO. For the benefit of the defendant, and then he answers in English and then he translates.

Mr. VOLKMER. So if someone other than the witness——

Judge TOLEDO. For the benefit of the defendant.

Mr. VOLKMER. So, if either the witness or the defendant is Spanish speaking only. there has to be a translation?

Judge TOLEDO. That is correct, sir.

Mr. VOLKMER. Does that slow down the trials?

Judge TOLEDO. I would say it does, about 30 to 35 percent.

Mr. VOLKMER. When a jury is being empaneled, what happens if a potential juror speaks only Spanish?

Judge TOLEDO. He is disqualified.

Mr. VOLKMER. Such persons are disqualified automatically?

Judge TOLEDO. Yes, sir; because right now——

Mr. VOLKMER. Automatically?

Judge TOLEDO (continuing). Right now the law requires that all of the trials be held in English, and it is required that the juror be able to read, write, and understand the English language.

Mr. VOLKMER. Do you know the percentage or numerical number of persons of adult age in Puerto Rico that speak only Spanish?

Judge TOLEDO. I don't think our experience——

Mr. VOLKMER. In other words, these are the people that are actually disqualified. According to information supplied by the Library of Congress, in the case of the *United States* v. *Ramos Colon*, decided in 1976, some 80 percent of all prospective jurors in Puerto Rico were said to be disqualified under this provision.

Is that correct, 80 percent?

Judge TOLEDO. I don't think so.

Judge TORRUELLA. I don't think so.

Judge TOLEDO. I think the official statistics we have is something like 47 or 43 percent of the population are bilingual in the sense of the law.

Mr. VOLKMER. All right. Setting aside potential constitutional problems for the moment, would you, once again, list the practical problems which would arise if a criminal case were conducted in Spanish.

Judge TOLEDO. The only problem would be if, for example, it's a civil rights violation, the Justice Department normally send a specialized attorney from Washington. He would be English speaking.

Mr. VOLKMER. We can get that changed. What else?

Judge TOLEDO. I don't see too many problems in the criminal side.

Mr. VOLKMER. We're assuming in these cases, of course, that the defendant is Spanish speaking.

Judge TOLEDO. As I said, I don't see too many problems in the criminal side. I stated that in my presentation.

Mr. VOLKMER. Now, if the defendant is English speaking only, what problems would arise?

Judge TOLEDO. Then you have a little different problem.

Mr. VOLKMER. Then we have the problem of interpretation. But we are doing that right now in the reverse.

Judge TOLEDO. Right, but then you would need two different jury wheels, one for Spanish speaking only and one for English speaking. You would need two jury wheels definitely.

Mr. VOLKMER. Do we really need two jury wheels or just a larger panel?

Judge TOLEDO. Larger panels, you could call instead of 40 jurors that we call now to pick 12, we would have to call around 100, and I can imagine the expense.

Mr. VOLKMER. Or 75 or 80?

Judge TOLEDO. It's a question of expense then.

Mr. VOLKMER. Judge, when we discussed the judgeship bill, I took the position I did because for the small amount of money that this country pays to provide justice, in proportion to what we pay for everything else, I thought we could afford a little more money to achieve better justice.

I feel the same way about the issue now before us. If we have to come up with a little more money to have more interpreters and more jurors and to pay for translations of transcripts at a rate of $7,000, if that is necessary, I think I at least am willing to pay it if we can then insure better justice for Spanish-speaking defendants in criminal cases.

Judge TOLEDO. That is what I say in page 14 of my presentation. It's a question of policy. Congress must decide.

Mr. VOLKMER. Yes; Congress must decide that. My next question, which I direct to Judge Coffin, concerns the problems which arise because of the length of time needed to translate transcripts, particularly when immediate remedies are requested of the court of appeals. It bothers me that, according to information we have, we can only translate 7 to 14 pages in a day.

Judge COFFIN. That's right. That is our information.

Mr. VOLKMER. That is the information we received before.

Judge COFFIN. Although——.

Mr. VOLKMER. And yet we have——

Judge COFFIN. I will come back to say this should be checked and updated.

Mr. VOLKMER. I agree. I think we should check that out. I am not an interpreter and I don't know what it takes to translate transcripts.

Judge COFFIN. In the Garsh report the estimates is not only based on her research in Puerto Rico but on checking the several Berlitz translation offices and other offices here, where the estimate would range from 8 to 14 pages.

Mr. VOLKMER. I notice that there are approximately 28 criminal cases pending now, is that right?

Judge TOLEDO. Appeals to the court of appeals?

Mr. VOLKMER. No. Where did I find that?

Judge TOLEDO. It could not be 28.

Mr. VOLKMER. This information is from Judge Coffin, regarding cases which are on appeal. The information indicates that 5 criminal cases were appealed in 1978 and in 1977 there were 34 cases appealed. Judge Coffin, assuming these figures are correct, would the translation process actually delay the final opinion that much?

Judge COFFIN. Yes, oh, yes, I think so.

We have a problem now getting transcripts, and our record is not as good as I would like to see in terms of acting on a Puerto Rico criminal appeal. In a substantial case, say a multiparty drug conspiracy, it is not unusual to have a trial be a week long or 2 weeks. So

that this would add, I think I agree with Judge Toledo, it would add several months to the time required to get the record before us in a manner where we could absorb it.

Mr. VOLKMER. Two or three months?

Judge COFFIN. Depending on the length of the trial. That is what I say in my statement.

Mr. VOLKMER. I agree that it would depend on the length of the record.

Judge COFFIN. Yes.

Judge TOLEDO. I think there is one more problem.

You need a Spanish-speaking court reporter.

Mr. VOLKMER. I won't argue with that. Surely we can train those. We have enough people in Puerto Rico that are intelligent, surely.

Judge COFFIN. The Garsh report, at least its data shows that such personnel, Spanish-trained court reporters or translators, are scarcer than hen's teeth, and you would also have to change the pay which we are paying them.

As I point out in my statement in writing, although I didn't say it orally, the pay rate in the court system for translators was several grades lower than it is for the Secret Service or the IRS.

Mr. VOLKMER. If the chairman will indulge me just a minute.

There is a statement here, at page 11, "Delays of 6 to 9 months in filing briefs is not uncommon." That is in the social security cases; is that correct?

Judge TORRUELLA. That is definitely correct.

Mr. VOLKMER. What is the cause of that?

Judge TORRUELLA. I think the large volume of cases. An additional problem, for example, the usual cases filed, it is really an appeal from the decision of the administrative agency. Many times they are indigents, and we have to assign an attorney, and the attorney has to meet with the petitioner.

They have to then seek the records of the cases which many times have already been sent to the Baltimore office. By the time that is gotten, time goes by. Then, as I say, a tremendous amount of volume of work, and I don't think they have a sufficient staff handling this matter.

Mr. VOLKMER. The Justice Department attorneys are usually English speaking in the social security cases?

Judge TORRUELLA. Yes.

Judge TOLEDO. All the briefs are prepared in the New York region where I understand they have seven attorneys, of which four are dedicated to the Puerto Rican District. They prepare all of the briefs there.

Mr. VOLKMER. I would like to clarify something I think you have already stated. Are all of the judges bilingual?

Judge TOLEDO. Yes, sir.

Mr. VOLKMER. Federal judges in Puerto Rico are bilingual?

Judge TOLEDO. Yes, sir, they are.

Mr. VOLKMER. So that is not a problem.

There is another issue that concerns me besides the appeal process. There is a State court system in Puerto Rico which, as you say, is conducted in Spanish.

Judge TOLEDO. That is correct, sir.

Mr. VOLKMER. And the system operates satisfactorily?

Judge TOLEDO. I would say so; yes, sir.

Mr. VOLKMER. Personally, I would like to reach a point somewhere where we could say that the 43, or whatever percentage of the population of Puerto Rico who are now denied the opportunity to sit as jurors in a Federal case, would have that opportunity. I feel very strongly that the defendant in a criminal case should have the opportunity to have the case tried in his language, and I think that that is the basic purpose of this bill. In the rest of the 50 States, if you have a defendant who speaks a language other than English, then we can provide him with simultaneous interpretation.

Judge TOLEDO. That is correct.

Mr. VOLKMER. Yes, Judge?

Judge COFFIN. I don't disagree with that. It's a matter of values, but two comments I would make, and I think both go to the need for further deliberation:

One, I share your view that we ought to be willing to spend more money for justice, if it takes more money, but you are not going to be able to say on the floor how much more this will take or even make a rough cut at it at the moment.

Secondly, that it's a matter of priorities and there is no better place to assess the country's needs in the justice field than on your committee and subcommittee. But we cannot appoint counsel for indigent people in civil rights cases, for example. Of course, we do under the Criminal Justice Act, but in some of those civil rights cases, litigants will come to me and it's pathetic, because they will have a good case, but they are just not entitled, we are not able to pay for the public funds for counsel to represent them. Now, that is a need.

Again, we have the same problem of what is this country willing to spend to have a better justice system?

Mr. VOLKMER. We do have a system for that. Maybe we better ask why the people in Puerto Rico are not receiving legal aid?

Judge COFFIN. No; I am not talking about that. They do have a legal aid service to the extent that the Legal Aid Society can represent them. But they are usually not able to attend to all of the civil rights cases that we have.

Judge TORRUELLA. I would like to make a comment, if I may, because it's a thought that had come to me and partly because of a decision I quote in my statement, the decision by former Chief Judge Cancio, and he mentions the fact that from a philosophical—he does not use those words, but this is as I interpret it—from a philosophical standpoint it seems to me that the Spanish-speaking defendant in the district court of Puerto Rico is not in any different position than a Spanish-speaking defendant who is tried in the district court of, say, New York or wherever they would be tried.

In both cases he should, if you are arguing that from a philosophical standpoint, he should be able to be tried in his language, then it equally applies to other district courts, not just the district of Puerto Rico.

Mr. VOLKMER. If I may, Mr. Chairman, I know I am taking more than my alloted time, but I would like to ask one more question.

If we kept the present system changing only the prohibition against going on a jury panel for individuals who speak only Spanish then where are you?

Judge TORRUELLA. Are you asking me, sir?

Mr. VOLKMER. Yes; Judge. I ask that question because we don't have that prohibition anyplace else that I know of.

Judge TORRUELLA. I think that raises other problems. That is why I limited it to that issue and didn't cover the area of the jury.

Mr. VOLKMER. If we are going to say the law should be uniform throughout, I think that would really ignore a situation in Puerto Rico that is different. My home state of Missouri doesn't have that many people that speak only a language other than English as you have in Puerto Rico.

Judge TORRUELLA. That is true. I don't think there can be any question the district of Puerto Rico is in that position no other district is in. Are there not other jurisdictions that have a similar problem or close to it?

Mr. VOLKMER. I am sure there are areas, like in the chairman's home State, where you have problems and in New York you probably have some problems also. That is what this bill is directed toward.

Judge TORRUELLA. Texas, Florida.

Mr. VOLKMER. I don't know of any other place where a juror is automatically disqualified because he cannot speak English.

Judge TORRUELLA. They actually don't say that, they say that is a qualification so they are excluded in the inverse, really. But the point is what is required by at least the decisions I have read and I think this is not only by the decisions in the statutes, I think it's also by the Constitution, what is required is not statistical equivalents but no one is excluded systematically for some invalid reason, and I don't think requiring, at least that is what the decisions say, requiring English has been at least held up to now not to be an invalid requirement.

Mr. EDWARDS. The second bell has rung and we must recess for 10 minutes, after which we will reconvene.

[A short recess was taken.]

Mr. EDWARDS. The subcommittee will come to order.

Again, we apologize for the delay, and I recognize the distinguished gentleman from Missouri, Mr. Volkmer.

Mr. VOLKMER. I have one final question. But first I want to thank the committee for their indulgence. What are the dates on which the jury panels go into effect?

Judge TOLEDO. I don't quite understand the question.

Mr. VOLKMER. The jury panels that you use, do you pick them on an annual basis, twice a year, three times, four times?

Judge TOLEDO. I think it's something like four times a year. We have a large pool of I believe 75,000 names, and as needed they are called, and we have what we call a special impaneling session which I just had one Monday morning.

Mr. VOLKMER. Now, that panel which was picked just this Monday morning——

Judge TOLEDO. That is correct.

Mr. VOLKMER. How long will that be used?

Judge TOLEDO. Each juror will serve 30 days. I can tell you out of 100 possible members of the panel, 3 were disqualified for lack of knowledge of English, and I believe 4 or 5 were disqualified for other reasons.

Mr. VOLKMER. Will you pick another panel 30 days from now?

Judge TOLEDO. I would say in about 90 days we will be picking another panel.

Mr. VOLKMER. Then would you pick another one 90 days after that?

Judge TOLEDO. That is correct, sir.

Mr. VOLKMER. So, somewhere around the first week in November another panel would be picked?

Judge TOLEDO. More or less.

Mr. VOLKMER. And every 3 months thereafter?

Judge TOLEDO. That is correct.

Mr. VOLKMER. Thank you very much.

Thank you, Mr. Chairman.

Mr. EDWARDS. Congressman Corrada?

Mr. CORRADA. Thank you, Mr. Chairman.

I do appreciate very much your giving me the opportunity to ask a few questions.

First of all, I would like to make a statement. As you probably know, in Puerto Rico as in any other community, there are different political ideologies, different political parties. Of course, politics are the most frequent pasttime in our island, even more so perhaps than here in the mainland.

But if there has been an issue where all political parties and ideologists have had a consensus, it is this issue. There is no justification whatsoever for the requirement in the U.S. District Court in Puerto Rico that English be the mandatory language in that court.

All of us in Puerto Rico who favor statehood, as I do and as the Governor of Puerto Rico does, believe that we can become a State of the Union without having to relinquish our Spanish language and our particular cultural values and traditions.

Those who support the status quo for the Commonwealth language, like my predecessor here in Congress, have supported similar bills in previous years. The two major parties in Puerto Rico have been in office for the last 40 years, Mr. Chairman, and both fully agree that this reform should be undertaken. It is not only I who make this statement but also the chief judge of the Supreme Court of Puerto Rico.

The Honorable Judge Trias-Monge recently wrote a letter to the chairman pointing out that this bill has the support of all of the major political forces in Puerto Rico.

It is with a sense of disappointment that I can see that a number of problems have been pointed out here today. Surely there will be administrative problems any time a reform is to be made. But, when there is an entire community of Spanish-speaking people, who are American citizens, requesting a reform for years and years—and this is not a new matter, this is a matter that has been before the United States Congress before—it is about time that we start moving to overcome some of the difficulties and inconveniences that I am sure the judges will have in Puerto Rico.

But there is no greater inconvenience than the inconvenience now suffered by the people of Puerto Rico in the Federal district Court. The inconvenience to those who have to administer that justice should yield to the paramount principle that quality of justice must be provided in our island.

With that statement I would like to ask a few questions of some of the witnesses.

In the Honorable Judge Coffin's testimony, we have a statement that in 1975 there were 22 criminal cases appealed to the court of appeals. In 1976, 29 cases were appealed; in 1977, 34 cases were appealed.

During the first 6 months of this year, 5 criminal cases have been appealed. I cannot believe that this relatively small number of cases that go to the court of appeals, which may constitute, as you correctly say, 30 or 31 percent of the entire criminal docket of your court.

Judge COFFIN. I was referring to the civil and criminal, the total.

Mr. CORRADA. Right. I can't believe that the fact there might have to be translation from a Spanish record to an English record in these small number of cases should be the reason for requiring that all cases that are tried in the district court be translated at the time the trial is being held.

I would like to ask this question of Judge Toledo.

Isn't it so that under the current system you are required to provide translation for all criminal proceedings in your court regardless of whether or not they end on appeal?

Judge TOLEDO. I would say about 90 percent of the cases that are tried.

Mr. CORRADA. Require translation?

Judge TOLEDO. That is correct.

Mr. CORRADA. And they require translation because the people are Spanish speaking?

Judge TOLEDO. Either the witnesses don't speak English or the defendant doesn't speak English.

Mr. CORRADA. Right; 90 percent of the cases.

Now, how many criminal cases were filed in your court in the year 1977?

Judge TOLEDO. I don't have the exact figures. It would be something like 200.

Mr. CORRADA. 200 cases?

Judge TOLEDO. Over 200.

Mr. CORRADA. 200 cases were filed of which 34 were appealed to the court of appeals.

Now, how many cases were tried?

Judge TOLEDO. I don't have that figure. But I would say between about 20 and 25 percent of all of the criminal cases were tried. I think this is normal. This is the normal percentage.

Mr. CORRADA. Now, of those 34 cases that were appealed, 10 percent, or approximately 10 percent, were tried in English?

Judge TOLEDO. That is correct, had an English-speaking defendant and English-speaking witnesses.

Mr. CORRADA. So that still lowers the figure in terms of the cases that would require translation.

Now, in the case of the civil cases, I believe there were 1,938 filings in 1977.

Judge TOLEDO. That is correct.

Mr. CORRADA. And for that same year there were 116 appeals, which is about 7 or 8 percent.

Judge TOLEDO. More or less.

Mr. CORRADA. Of the filings, not necessarily of the cases that were tried.

Now, what is the percentage approximately, if you can state them, of the civil cases that are tried in English, because all of the parties understand English and, therefore, do not require translation.

Judge TOLEDO. It's a very difficult question to answer, but roughly I would say 50 percent of the cases tried.

Mr. CORRADA. So that would mean then approximately out of the 116 cases that were appealed perhaps as many as 50 percent were tried in English and did not require translation.

Judge TOLEDO. Yes.

Would you agree with that, Judge Torruella?

Judge TORRUELLA. I just don't see this as so clear-cut because there are very few cases in which you have a situation in which no one speaks English or no one speaks Spanish.

What usually happens in both civil and criminal cases is that you might have a defendant, for example, that does not speak or does not understand English, and you provide translation for him but you may have a witness who understands English and does not require translation for the questions but may require a translation for the answers.

Mr. CORRADA. I understand.

Judge TORRUELLA. And all sorts of combinations. You may have a defendant that understands English but the witnesses are the ones that have this problem.

Mr. CORRADA. But, for instance, in the criminal cases you would say that about 90 percent of the cases require translation because either the defendant or witness are not able to communicate or understand the testimony?

Judge TOLEDO. Either 90 or 95 percent.

Mr. CORRADA. In the civil cases that percentage would be definitely lower.

Judge TORRUELLA. I would disagree with those figures; I think they are higher in the sense there are very few cases in which, especially, I would say in general there are very few cases in which a translator is not required at some point either for a witness or for a party.

Mr. EDWARDS. I am sorry, we must recess for 10 minutes.

[A short recess was taken.]

Mr. EDWARDS. The subcommittee will come to order. Since we are starting to run our of time and we have other obligations this afternoon, we are going to have to limit Congressman Corrada to another 5 or 10 minutes.

Mr. CORRADA. Thank you, Mr. Chairman.

Mr. EDWARDS. We have another witness and must allow adequate time for him.

Mr. CORRADA. With respect to social security cases that were mentioned here before, isn't it a fact that these cases are really administrative review cases where the administrative record is reviewed and the cases mainly are briefed by the parties in writing and perhaps there might be oral argument in the case?

Is that correct?

Judge TORRUELLA. Yes; that is true. They are mostly administrative, basically administrative review, but it seems to me the same principle applies. There are people that don't speak English. Most of them, I would say, and the same principle would apply, they should be following the logical extension, that they should also be entitled in those proceedings.

Mr. CORRADA. But insofar as the court itself is concerned, the proceedings would consist of the filing of written briefs and oral arguments. Additionally, of course, rather simple arrangements could be made so that if one of the parties does not understand English, the brief be filed by the parties in both languages, and if there is oral argument, that there be an interpreter if the party does not understand Spanish.

What I am saying is that these are rather simplified cases in that sense.

Judge TORRUELLA. My point in this area was not that it's impossible to do. I think it is possible to do. I think it's just going to be a tremendous burden on both the court and the U.S. attorney's office.

Mr. CORRADA. Right. Now, in the case of interlocutory injunctions or preliminary injunctions or temporary restraining orders or cases of an emergency nature, I am sure that if I were the judge I could tell the parties that if they wanted to have a record ready for appeal that they should stipulate before the proceeding started, that these emergency proceedings be undertaken in a more expeditious manner.

Perhaps the parties would stipulate that the proceedings be in English if the proceedings are of an injunctive nature. These problems could be overcome if there is a determination to solve them.

Judge TORRUELLA. Usually when you get to the litigation stage, especially in an injunction proceeding which is something that is alive, in the sense of being very imminent, there is not too much good will between the parties.

Mr. CORRADA. There may not be too much good will but both parties are very interested in having a prompt decision and on that basis they probably would agree.

Judge TORRUELLA. Yes; definitely. Except that the party that expects the injunction against him might not be or I should say the party that expects the injunction might not be willing to have a situation of facilitating it to the other party.

Mr. CORRADA. I would like to address this question to Judge Toledo.

Under the language contained in the bill and given the fact that we are referring here to a bill that provides for the optional use of Spanish, at the discretion of the court and when it is in the "interest of justice," if you are not given the administrative resources that you feel are required or are necessary to be able to fully implement this reform, wouldn't you agree that you would have in your own hands the instruments to resolve the administrative problem by merely deciding that you will not be able to hear as many cases in Spanish as you would like to hear in view of the limited resources?

Judge TOLEDO. Then I take it the law would not become effective.

Mr. CORRADA. If they don't give you the means.

Judge TOLEDO. Then it would become a cosmetic coverup.

Mr. CORRADA. No; you could implement it——

Judge TOLEDO. In fact, we would not be able to put it in effect.

Mr. CORRADA [continuing]. You could implement it in a reasonable period of transition as resources are made available and developed.

Judge TOLEDO. I would agree.

Judge COFFIN. We might not agree. The court of appeals might not agree. That is, we have many civil cases involving welfare, and the State's or the municipality's defense for not doing something is that they don't have the administrative resources to do it. The Supreme Court has held in that context a lack of resources is not an excuse.

Mr. CORRADA. But you are speaking, Judge Coffin, of constitutional and civil rights.

Judge COFFIN. Which I think would apply here.

Mr. CORRADA. Now, what kind of right would we be creating under this legislation given the fact that it provides only for the optional use of Spanish, under certain circumstances, at the discretion of the court?

Judge COFFIN. No. The question before the court would be, what did Congress have in mind when it used words "in the interest of justice."? Did it have in mind such a thing as lack of administrative resources or did it not?

I think Judge Toledo's point was this was something, as you work on the legislation, that you should clarify.

Judge TOLEDO. We need guidelines.

Mr. EDWARDS. The time of the gentleman has expired, and I am afraid as much as the subcommittee would like to continue the interrogation, we do have a problem with time.

We thank the witnesses very much.

We probably will be in touch with the witnesses, at a later time, for further information. Your testimony today has been immensely helpful to the subcommittee.

Judge COFFIN. We appreciate your interest and what we think are the very good questions of all of those participating.

Mr. EDWARDS. Thank you. It's nice to see you again.

Our last witness today is Mr. Julio Morales Sanchez, U.S. attorney for the District of Puerto Rico.

Mr. Morales, we welcome you, and without objection, your full statement will be made a part of the record, and you may proceed.

[The statement follows:]

STATEMENT OF JULIO MORALES SANCHEZ, U.S. ATTORNEY FOR THE DISTRICT OF PUERTO RICO

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., August 8, 1978.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: My name is Julio Morales Sanchez, and I have been the United States Attorney for the District of Puerto Rico since August 19, 1970. I appreciate the opportunity to testify upon the kind invitation of your Committee in support of those portions of H.R. 10228 and S. 1315 (Sections 3 and 4) which would permit the use of the Spanish language in the United States District Court for the District of Puerto Rico.

As has been stated before in relation to this proposed law, in Puerto Rico there is a language situation converse to that of the United States. The best way to illustrate this fact is to suppose for a moment that, through an enforceable decree, all the courts in the United States of America shall henceforth use the Spanish language as the official language to litigate all matters under its consideration. If this fact is considered in the light of all the constitutional guarantees that recognize the Supreme Court of our land, all citizens would wish to preserve the fundamental rights of due process, in the form of the rights to confrontation and counsel in a way that at least assures that such citizens fully understand the proceedings in court and that the selection of a representative cross section of the peers to serve as jurors fully understand the proceedings in which justice is to be administered. Most certainly, the great majority of the citizens in North America would exert all efforts and exhaust all avenues available to succeed in securing the right to litigate their affairs in their mother tongue, the English language. Such an example brings us to the realities of the Commonwealth of Puerto Rico today. Although the Spanish language is the mother tongue of all Puerto Ricans and the only language spoken by the vast majority of our citizens,

the law currently provides that all pleadings and proceedings in the District Court for the District of Puerto Rico shall be conducted in English (48 USC 864 (1976)). I agree with my brother colleague John Huerta, from the Department of Justice [1] that such statute, and its supplements, 28 USC 1865(h) (2) and (3), 1976, effectively limit participation on federal juries to those Puerto Ricans, usually of a higher educational and occupational level than the average Puerto Rican, capable of speaking and understanding English. The net result of this fact is to foreclose the right to trial by jury of their peers.

To illustrate this point, in the natural year of 1976, my office presented 128 cases to the grand jury where a true bill was returned. Of these, 27 cases were heard on their merits by the Honorable District Court for the District of Puerto Rico. It is worthy to state that in 25 of these cases heard by the Court, the defendants petitioned and were granted the use of an official court interpreter based upon the determination that the defendants could not understand the proceedings in the English language. This figure constitutes approximately 95 percent of all criminal cases heard in the District Court of Puerto Rico in 1976.

In the natural year of 1977, my office presented 183 cases to the grand jury where a true bill was returned. Of these, 30 cases were heard on their merits by the Honorable District Court for the District of Puerto Rico. Again, 26 defendants petitioned the Court and were granted the services of an official court interpreter based on the determination of their lack of knowledge to follow the proceedings in the English language. This shows the importance of the applicability of such a statute as the one under consideration by this Committee.

There are administrative problems which will arise upon the approval of this law and its applicability in the District of Puerto Rico. I defer to the pertinent judicial officers to comment upon them. But I have to confess that as a Puerto Rican citizen, a practicing attorney and a federal officer of the court, the implementation of this law will undoubtedly offer a natural and most effective way of administering justice in the District of Puerto Rico by updating the historical circumstances of the United States/Puerto Rico association and allowing approximately 3.5 million United States citizens to pursue their constitutional guarantees in their mother tongue, thus granting the quality of fairness and a more meaningful accommodation of our great constitutional precepts to be enjoyed by all, as was intended originally by the Founders of the Republic without distinction of our formal education or intellectual sophistication.

In relation to the enactment of Sections 5 through 12 of this project of law, I wish to address this Committee to the following legal commentaries:

1. Interpreters for the Defense: Due Process for the Non-English-Speaking Defendant. William B. C. Chang and Manuel Araujo, California Law Review, Vol. 63, pages 801–823, May, 1975.

2. Non-English-Speaking Persons in the Criminal Justice System: Current State of the Law. Alan J. Cronheim and Andrew H. Schwartz, Cornell Law Review, Vol. 61, pages 289–311, January, 1976.

3. No Comprendo: The Non-English Speaking Defendant and the Criminal Process. Joan Bainbridge Safford, The Journal of Criminal Law and Criminology, Vol. 68, pages 15–30, March, 1977.

Again, I appreciate the opportunity to comment on H.R. 10228 in relation to its applicability to the District of Puerto Rico, and stand ready to be of any assistance.

Cordially.

JULIO MORALES SANCHEZ,
U.S. Attorney.

TESTIMONY OF JULIO MORALES SANCHEZ, U.S. ATTORNEY FOR THE DISTRICT OF PUERTO RICO

Mr. MORALES. Thank you, sir.

Good morning.

My name is Julio Morales Sanchez, and I have been the U.S. attorney for the District of Puerto Rico for the last 8 years, almost up to today.

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[1] Testimony by the Honorable John Huerta, Deputy Assistant Attorney General, Civil Rights Division, before the Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights, concerning H.R. 10228, on July 19, 1978.

As you may have seen, Your Honor, my statement is rather brief and it has been brief for the specific reason that I have endeavored to research practically all that I have been able to, that has been able to come into my hands relative to previous testimony here or before the Senate, namely, the persons who have worked in the Department of Justice during the last 5 or 6 years, and I fully agree with those.

My only participation, I hope, my only possible participation in relation to further illuminating this committee would be to the statistics of the last 2 years of the number of criminal cases that have been heard, and the number of defendants that have requested the use of translators because of their inability to defend themselves in the English language.

I would also like to mention the fact that 5 years ago the Commonwealth of Massachusetts decided a case by the name of *Commonwealth of Massachusetts* v. *Olivo* in which one of the basic reasons for the court to disallow use of other languages in the legal process was the fact that it was held that the United States was not a multilingual community.

I think that since then we have had reason enough to believe otherwise. The fact that we are here, I think, establishes the paramount necessity to consider the United States of America, at least insofar as the law is concerned and its applicabilities, a multilingual nation.

As I have suggested in my testimony, let us think for a moment that a decree is approved in the U.S. mainland whereby the Spanish language would be used to litigate cases in court.

I must imagine that the basic reaction of all citizens would be, well, how do I secure myself of understanding the proceedings.

Last, I would refer myself to a comment made by a Federal judge in 1922, a judge by the name of Hamilton who came to sit in Puerto Rico. He didn't make too many friends, but he said one thing that has tremendous actuality to date.

He was writing to the then Office of Insular Affairs, proposing a program whereby Puerto Rico would become more active within the Federal gravitational forces at that time.

I think that as the seventh postulate he says that we should endeavor to bring the Constitution of the United States to every home in Puerto Rico. I think that this bill, 10228 is the first step to fully bring the Constitution of the United States to every Puerto Rican home in the form of their mother tongue, Spanish.

With that I thank the committee for their kindness to allow me to come here, and I submit myself to your discretion.

Mr. EDWARDS. Mr. Morales, your testimony then is that you would recommend that the whole bill be enacted?

Mr. MORALES. I would fully support it. Of course, I make the distinction at the start of my written presentation that I am only speaking as to sections 3 and 4. As to the other sections, I have taken the liberty to address the committee to three law journal articles which I gather bear on that point.

Mr. EDWARDS. Do you think that in Federal criminal cases, in the Federal District Court in Puerto Rico, Spanish-speaking defendants are being denied due process?

Mr. MORALES. I may not go as far as saying that they are being denied due process, Your Honor. I do not think that the problem is

deep enough to reach the due process stage. But I do believe that this is a problem of fairness and have a recognition of tremendous limitations that a person has just by the fact that you have to seek justice in a language which is foreign to you.

I fully support four cases that have been decided in the District of Puerto Rico relative to the due process problem, and I gather that other persons in the Department of Justice have testified as to those cases.

I do not think it is a matter of due process. I think it is a matter of the recognition of a whole community which is being deprived of one of their most intimate aspirations, which is to understand the criminal charges that the State propounds toward them and all of its implications.

I must imagine even the most scrupulous translator cannot translate the full impact of a question propounded in a different language. I think we can all be aware of the fact that there is a tremendous emotional loss when we translate from one language to another, even taking into consideration the most ideal circumstances, which certainly are very hard to find, that a translator would captivate the emotional sense of a whole culture, which is the manifestation of a language.

Mr. EDWARDS. Do you have many bank robbery cases in your jurisdiction?

Mr. MORALES. We have our share; yes, sir.

Mr. EDWARDS. In the Federal district court?

Mr. Morales. Yes, sir.

Mr. EDWARDS. What percentage of your criminal cases, would you say are bank robbery cases?

Mr. MORALES. It varies. Our experience in bank robbery cases has started in 1971 with a big case, and it has varied from 1971 to 1974, and I may be exposing myself to a little error, but I would say it could have been 10 or 15 percent of our criminal calendar.

The year 1976 was very, very slow in bank robberies. Last year it was rather active. This year I just don't have the statistics, but it is somehow poignant the fact in 1976 almost 96 percent of all defendants requested that proceedings be translated.

Mr. EDWARDS. In addition to the criminal cases, you would like to see civil cases in the Federal district court conducted in Spanish also?

Mr. MORALES. Oh, yes. I believe that we must cater to four centuries of history which in no way are contradictory to either our constitutional mandates or otherwise imposing on any one of the parties here, be it the Commonwealth of Puerto Rico, the United States of America, any stresses which would in any way affect negatively our relationships or the country.

I think it would be a most gracious recognition on the part of the Anglo-Saxon tradition to formulate a law which recognizes our past history, which I believe all Puerto Ricans are very proud of, and the willingness of the greater community of the United States to recognize an ethnic reality.

Mr. EDWARDS. Congressman Corrada?

Mr. CORRADA. Thank you, Mr. Chairman.

I would like to commend the U.S. attorney, Mr. Morales Sanchez, for his statement and his remarks, and I would like also to associate myself with those remarks.

I would like to ask you this question. Wouldn't there be an expeditious disposition of criminal cases if in the 90 percent of cases where you now require interpreters for the entire proceeding, you would instead conduct those cases in Spanish and then only translate those cases which are appealed?

Mr. MORALES. Yes. As Chief Judge Toledo stated a moment ago, I would concur with him, and even go further.

I think that the time factor in any criminal case whereby extensive translation is necessary, takes at least one-third more of the court time to try the case, and not only is it more expeditious, I think it is more comfortable, for all parties, the judge, the prosecutor, and the defense.

I think they have to spend less energy in terms of following a parallel line of linguistics, if I may say so. We are really trying a case in two languages.

Mr. CORRADA. All cases are tried in two languages regardless of whether they are appealed or not?

Mr. MORALES. Of course.

Mr. CORRADA. I see that in the first 6 months of this year, there have only been 5 criminal cases appealed from the District court of Puerto Rico to the U.S. Court of Appeals for the First Circuit.

Still, some of the cases that were appealed, even the most complicated ones, were conducted in English?

Mr. MORALES. That is correct.

Mr. CORRADA. Do you see any constitutional infirmity or serious constitutional question in sections 3 and 4 of this legislation?

Mr. MORALES. I have read your statement to this committee, and I fully agree with it. I don't see any constitutional infirmities being raised just because we would be depriving anybody of their right to have a trial in English or Spanish.

Mr. CORRADA. Now, we have seen statistics, based on the 1970 census, that as many as 57 percent of those who were interviewed knew how to read and write Spanish and understood Spanish but didn't understand English to the point of being qualified for jury service.

Mr. MORALES. Fully conversant.

Mr. CORRADA. How could potential problems resulting in the impaneling of people who know only Spanish or know only English be resolved?

Mr. MORALES. Your Honor, as I was listening to the question-and-answer session prior to my deposition here, it strikes me that at this moment we are actually selecting jurors who are bilingual.

I do not think, if I am addressing correctly your question, your question is, will there be any problems in selecting two rolls of jurors whereby one would have the possibility of having cases in Spanish and the other one in English; is that the gist of your question, sir?

Mr. CORRADA. Yes. Whether any complications could be overcome in terms of having people eligible for jury service who are only conversant in Spanish?

Mr. MORALES. My suggestion would be to continue the same jury management we have now in our court with the only extra work of identifying each jury which comes to the Federal court as only fully conversant in one language or fully conversant in both languages.

I do not think we would be so limited as to completely preclude other people who just could be conversant in English by establishing a fully conversant in Spanish role, because all of the people who are now

qualifying for the English language jury participation, of course, know Spanish.

Mr. EDWARDS. Would the gentleman yield at that point?

Mr. CORRADA. I certainly will yield.

Mr. EDWARDS. It would seem to me that that jury selection system would get the wealthy and the privileged people on the list and that it would not be wholly representative of our society.

Do you agree?

Mr. MORALES. I would tend to concur with you, Your Honor, yes, sir; that is correct.

Mr. CORRADA. I yield back the balance of my time, Mr. Chairman.

I have no further questions.

Mr. EDWARDS. Mr. Starek?

Mr. STAREK. I have no questions, Mr. Chairman.

Mr. EDWARDS. Ms. Gonzales?

Ms. GONZALES. Thank you, Mr. Chairman.

I have only one or two questions.

Mr. MORALES. I hope I have the answers.

Ms. GONZALES. One objection that has been raised is that under this bill some attorneys, who are primarily or solely Spanish-speaking, would be practicing in the Federal courts, even though they may not be able to research Federal precedents since all of the relevant cases and books, etc., are in the English language.

Is this a valid objection?

Mr. MORALES. I must confess, first of all, I do not have the privilege of having read any scientific research on this. I would only refer myself to my emperical experience. My experience has been that all law schools in Puerto Rico, which provide the vast majority of attorneys in Puerto Rico hold their subject in Spanish and English.

Some years ago about 40 to 50 percent of the faculty were visiting professors from the United States who were fully conversant only in English. The textbooks we use are basically English written textbooks in most of our major aspects of the law.

I am positively sure all lawyers in Puerto Rico have read the case of *Miranda* against *Arizona*. However, I have never found that the *Miranda* case has been translated from English to Spanish.

In addition, all the Federal reporting systems come to Puerto Rico only in the English language and, as far as I have seen, attorneys who are not fully fluent in the language can still understand what a case is about.

I would say that the research of a case is done in the solemnity of a library. You do not have to address the court or speak the language in order to do the research. I am at a loss when I am confronted with that hypothetical question, my lady.

Ms. GONZALES. Thank you.

So you do see the difference between being able to adequately research and cite cases for precedence and being able to fluently converse in the language?

Mr. MORALES. Yes, I work under the supposition it is being done at this moment, and it has been done since I became an attorney. This is as far back as I can go.

Ms. GONZALES. Would you say that Federal cases are also looked at, in many instances, by State attorneys since they also rely on Federal precedents?

Mr. MORALES. Oh, yes, very much so.

Ms. GONZALES. Thank you.

I have one last question which relates to the suggested amendment by the Department of Justice regarding the empaneling of jurors. They suggested that we retain the English only requirement for grand juries but proceed to allow the use of the Spanish language by petit jurors.

Do you have any comment on that amendment

Mr. MORALES. Yes; as a matter of fact, I was graciously consulted by the Department of Justice officials when this question was propounded for the first time and thought about.

I am fully supporting it because now we go back again to the converse proposition. About 90 percent of the participants in grand jury testimony are English speaking officers who belong to the different law enforcement agencies as they are usually the persons who go before the grand jury to testify.

In that aspect, it is maybe as in any other grand jury within the Nation. English would be the vehicle of communication in most cases.

Ms. GONZALES. Thank you very much.

Mr. EDWARDS. Are English materials, including ballots, translated into Spanish in Puerto Rico?

Mr. MORALES. As far as I can recall, yes, sir.

Mr. EDWARDS. I ask that question because this subcommittee is the author of the bill that requires some election materials in the United States to be translated into different languages in the event the area is impacted by foreign language residents who are U.S. citizens.

Mr. MORALES. I am aware of that, sir.

Mr. EDWARDS. What about the bankruptcy courts in Puerto Rico; are proceedings there conducted in Spanish or are they conducted in English?

Mr. MORALES. Sometimes; I would say that the bankruptcy proceedings in Puerto Rico usually take into consideration the flexibility needed in order to conduct its proceedings. Sometimes the attorneys appearing to argue a motion would be English-speaking attorneys, and I would presume that the hearing would be conducted in English.

Otherwise, I have heard some proceedings in Spanish, although I understand that now a record is kept and it may vary. I would yield to Chief Judge Toledo to further answer that question.

Mr. EDWARDS. Are the records kept, Judge, in Spanish or English in bankruptcy proceedings?

Judge TOLEDO. We have a recording machine. It depends on who the attorney is. If all the attorneys speak English, than the hearing will be held in English.

If all the attorneys speak Spanish, it will be held in Spanish.

Mr. EDWARDS. Do you have a lot of bankruptcy cases in Puerto Rico?

Judge TOLEDO. Yes; a tremendous load. We just got a second judge.

Mr. EDWARDS. Do you have many appeals?

Judge TOLEDO. Yes, sir, and they all go in English, the whole record. The opinion is written in English.

Mr. MORALES. We are very fertile in bankruptcy.

Mr. EDWARDS. Thank you very much.

If there are no further questions, we thank you, Mr. Morales, very much, for your testimony.

Mr. MORALES. Thank you, Your Honor.

Mr. EDWARDS. The subcommittee is adjourned.

[Whereupon, at 12:30 p.m., the Subcommittee on Civil and Constitutional Rights adjourned.]

APPENDIXES

APPENDIX 1

U.S. DISTRICT COURT,
DISTRICT OF COLORADO,
Denver, Colo., July 7, 1978.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, House Office Building, Washington, D.C.

DEAR SIR: I regret to inform you that I am unable to attend the hearings conducted by the House Subcommittee on Civil and Constitutional Rights on July 19, 1978 regarding H.R. 10228. However, I would appreciate it if you would keep me advised of developments concerning the enactment of H.R. 10228 as it concerns an area of great interest to me.

Please find enclosed 50 copies of a statement I have prepared for the Subcommittee in support of the enactment of H.R. 10228. I hope it will be of assistance to the Subcommittee.

Yours very truly,

Judge SHERMAN G. FINESILVER.

STATEMENT OF HON. SHERMAN G. FINESILVER, U.S. DISTRICT COURT FOR THE DISTRICT OF COLORADO

In my view, H.R. 10228 is necessary legislation and I respectfully suggest enactment of the bill. While I feel that those aspects of the bill relating to bilinguality are important, of greater concern to me are those provisions which speak to the problems of individuals with physical communicative impairments, i.e., the speech and hearing impaired.

Effective communication of one's own ideas and accurate receipt of another's is too frequently taken as granted in any setting, legal or otherwise. In twenty-three years of experience on the bench in both federal and state courts, I have on countless occasions observed and become concerned over our human ability to miscommunicate ideas. More often than not, the reasons for an inability to achieve a meeting of the minds rest on a set of faulty assumptions as to effectiveness which are adopted by the communicators themselves. Abhorrence of such assumptions proliferates where an individual who seeks to communicate and to receive communication is burdened with an impairment of one or both of the two major senses.

Responsibility for the protection of an individual's legal rights rests in the first instance with the individual himself. A physical incapacity, however, ought never impede an individual's ability in any legal setting to express that information which will enable him to discharge his personal obligation to the protection of his legal rights. Inaccessability to an interpreter in such an instance is both a denial of due process of law in a criminal context as well as a denial of equal access to the courts in a civil setting. Certainly the guarantees within the Fifth and Fourteenth Amendments to the United States Constitution were not intended to be wholly without meaning as applied to communicatively impaired individuals.

Moreover, where an individual who is burdened with a communicative disability is either voluntarily or involuntarily placed within the legal system, a penalty is in effect being levied under color of law on that individual. This is especially true where no efficacious means are provided to enable that individual to overcome what is clearly a surmountable barrier. The Sixth Amendment to the United States Constitution guarantees a defendant the effective assistance of counsel, notice as to the nature and cause of criminal charges and the right of confrontation. Absent aid of competent interpretation, these constitutional safeguards are not only abridged as applied to persons with communicative impairments, but they are forceless in impact as well.

In pertinent part, I find attributes of the bill to be impressive. The following provisions I view as being particularly cogent as they relate to the aforementioned issues.

(*a*) A cadre of qualified interpreters which has not heretofore been available for use in United States courts will now be automatically utilized upon motion of a communicatively impaired individual or the court.

(*b*) Concern over the competence of interpreters will summarily abate in light of the promulgation of standards for their certification. This aspect of the bill is particularly critical to the utility of the interpreters program itself; the availability of interpreters would be a useless and even detrimental service if the competence of interpreters was such that it acted as an obstacle, rather than a conduit for communication.

(*c*) The interpreters program will now be available both in civil and criminal actions in all United States courts.

(*d*) The interpreters program will equalize the right of access to the courts and the privilege of citizen participation in the legal system between communicatively impaired individuals and those not so burdened. Moreover, a full realization of rights arising under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution will be forthcoming to communicatively impaired individuals.

(*e*) The cost of interpreters will, in most instances be free of charge to communicatively impaired persons. This provision of the bill will not only serve to lift barriers previously operating against such an individual's legal interests, but will create incentives for his autonomous entry as a full participant into other roles in United States courtrooms as well.

H.R. 10228 is an exemplary piece of legislation and I wholeheartedly support its enactment because it comprehensively and effectively restores fundamental constitutional rights and privileges to communicatively impaired individuals in United States courts.

ALEXANDER GRAHAM BELL ASSOCIATION FOR THE DEAF, INC.,
Washington, D.C., July 28, 1978.

SUBCOMMITTEE ON CONSTITUTIONAL AND CIVIL RIGHTS,
COMMITTEE OF THE JUDICIARY,
House of Representatives, Washington, D.C.

GENTLEMEN: We are delighted to have the opportunity to offer testimony on this Bill which is intended to assure that the rights of hearing impaired persons are maintained and protected during proceedings in United States courts. Fifteen copies of our remarks are attached.

Sincerely,

GEORGE W. FELLENDORF, ED. D.,
Executive Director.

Attachments.

STATEMENT BY GEORGE W. FELLENDORF, ED. D., EXECUTIVE DIRECTOR, ALEXANDER GRAHAM BELL ASSOCIATION FOR THE DEAF, INC.

Mr. Chairman, and members of the Subcommittee, ladies and gentlemen, I am pleased to have this opportunity to speak in support of this bill because I represent a voluntary organization whose membership includes teachers, parents of hearing impaired children, and a number hearing impaired individuals as well. Our membership of 7,000 dues-paying members come from all over the nation and includes persons from all walks of life and socio-economic status. As you well know, hearing loss is no respecter of persons, hence our area of concern is for families with hearing impaired and youth from low and high economic levels, from English-speaking and non-English-speaking backgrounds and from all levels of educational background.

H.R. 10228 speaks to the needs of virtually all of our membership and for this reason we endorse its purposes and content and have only a few constructive comments to make as your Subcommittee considers it at this time.

Page 2 Line 15

Delete *or* and substitute *and* such that the line reads: "oral and manual interpreters for the hearing impaired and * * *"

Rationale.—While Congressman Richmond has correctly estimated in his statement of July 19, 1978, the total number of hearing impaired persons in the United States as between 15 and 20 million, he has incorrectly identified this large population as "deaf." In fact, the number of deaf persons in the United States is closer to 500,000 (Schein and Delk, 1974), and of this number there is no clear approximation of those who in fact can use and understand the language of signs.

By far the greater number of the hearing impaired population is hard of hearing and as such is not knowledgeable nor proficient in the language of signs. These

individuals use either hearing aids, lipreading or a combination of both to facilitate receptive communication with hearing persons or others with impaired hearing. It is these individuals who require careful repetition of the words spoken by judge, counsel, or witnesses for maximum understanding of the proceedings. This procedure is known as oral interpreting.

In furtherance of the understanding of the problems of the hearing impaired, one must point out that it is not only incorrect, but denigrating to state that for this population their primary language is not English. As a matter of fact, for virtually all of this population, their mother tongue is spoken English and it is only in reception of their English that they are deficient.

Nothing in the above remarks should be interpreted as evidencing anything but profound support of this bill to provide manual interpreters for those citizens who need such help in courtroom proceedings. On the contrary, the Alexander Graham Bell Association for the Deaf, Inc. enthusiastically endorses the provision of manual interpreters. But we feel equally strongly that the provision of oral interpreters will be necessary to assure the far greater number of hearing impaired citizens their rights in the United States courts.

It may interest the Committee to learn that only recently has the need for oral interpreters begun to be recognized by professionals and others. The Alexander Graham Bell Association for the Deaf, Inc. has consistently provided oral interpreters for its adult deaf members in order to insure their full participation in board of directors meetings, in professional meetings and in those types of large group gatherings where similar assistance is important. Our experience is that with such assistance these deaf persons can participate through the use of lipreading, or speechreading as it is called today, and thus be contributing members of the discussion in much the same way as do their hearing peers.

The question of the visibility of certain speech sounds is a complex question of context, training, and vocabulary of the hearing impaired persons. There is little question that tens of thousands of hearing impaired individuals, including many senior citizens are actively utilizing speechreading on a daily basis for augmenting their hearing reception and that a smaller but significant number of profoundly deaf individuals are relying exclusively upon speechreading for all of their receptive communication. Some of these latter individuals have earned graduate degrees using this form of receptive communication. The viability of this technique for transmitting information to a large number of hearing impaired persons therefore, has been clearly demonstrated.

In furtherance of this commitment to speechreading and oral interpreting, the A. G. Bell Association for the Deaf is sponsoring a pilot workshop on October 27, 28, 1978 here in Washington to review guidelines which are now being developed for oral interpreting for the hearing impaired. This effort, which is being funded entirely by the Bell Association, is intended to advance the cause and the techniques of oral interpreting can be expected to reinforce the proposed change in HR 10228 which specifies that oral and manual interpreters will be provided in United States courts in the future. Training sessions, video taping of expert oral interpreters at work and in-depth discussions between oral interpreters and the hearing impaired whom they are serving will be the primary focus of this pilot workshop. We invite the Subcommittee to designate a staff member to attend as an observer if this is considered appropriate.

Thank you, ladies and gentlemen, for this opportunity to share our thoughts and recommendations with you on the crucial matter of protecting the rights of hearing impaired citizens in our courts.

References

Schein and Delk, The Deaf Population of the United States. Silver Spring. National Association of the Deaf. 1974.

Statement of Hon. Edward R. Roybal in Support of Bilingual Courts Legislation

Mr. Chairman, I want to thank you and the other distinguished members of this Subcommittee for giving me the opportunity to testify in support of legislation designed to provide adequate bilingual assistance in the Federal courts.

While I realize that the subject of these hearings is H.R. 10228, I would like to direct the Subcommittee's attention to my own bill on this subject—H.R. 1996, the Bilingual Courts Act.

My bill provides that a judge shall order the use of equipment and facilities for recording and simultaneous language translation of the court proceedings when ever a party to the proceeding requests their use and the judge determines either that a party to the proceeding does not speak or understand English with reasonable facility or that there may be testimony from a witness who does not speak or understand English. Moreover, the bill specifies that the proceedings shall be recorded verbatim in addition to any stenographic transcript that may be kept.

My bill also provides that the Director of the Administrative Offiee of the U.S. Courts is to prescribe, determine and certify the qualifications of interpreters and transcribers, set appropriate compensation schedules, and provide appropriate equipment and facilities for recording and simultaneous language translation of proceedings.

Finally, in addition to providing a procedure for compensating the interpreter the bill designates that its provisions shall apply to parties in eivil and criminal proceedings, bankruptey adjudications, and in every proceeding before a U.S. Magistrate. By extending the bill to civil proceedings, it is my intention, Mr. Chairman, to ensure that partieipants in habeas corpus and immigration cases will be cognizant of the judieial action whieh will affect their lives.

The need for this type of legislation is beyond dispute. There are today millions of people in this country who do not understand or speak English fluently. Some members of this group do not speak English at all; others speak only broken English. Both groups share a common bond in that neither can comprehend a judicial proceeding or effectively participate in it. The need for this type of legislation has been obvious since at least 1970, when the Civil Rights Commission report entitled *Mexican-Americans and the Administration of Justice in the Southwest* concluded that the language barrier and eultural differences of the Spanish-Speaking had severely handicapped them at every stage of the judieial process, from the arrest to the trial, and even when seeking parole.

The legal support for my bill and the bill before the Subeommittee is no less compelling. Since the landmark ease of *Gideon* v. *Wainwright*, the Supreme Court has time and again held that in order to ensure fairness and partieipation of the accused in his trial, it was necessary for the eourt to provide him with the basic tools to adequately present his ease. The "due process" clauses of the Fifth and Fourteenth Amendments, the Constitutional right to confront your accusers, and the Constitutional right to counsel, all to some degree or another mandate the passage of this type of legislation.

Finally, Mr. Chairman, let us remember the old refrain that justiee delayed is justice denied. I urge you and the Subcommittee to act with all due haste to favorably report this desperately-needed legislation.

STATEMENT OF SENATOR DENNIS DECONCINI

I appreciate the opportunity to appear this morning before the Subeommittee on Constitutional and Civil Rights to testify on the court interpretors bill. This bill was developed to meet the pereeived needs for higher quality and more available interpretors serviees in our Federal eourts. It attempts to ensure that all participants in our Federal courts will be able to meaningfully take part in court proceedings by assuring that if the participant does not speak or understand English, or has a hearing or speech impairment, that he will have aeeess to qualified interpretors. The proposals contained in this legislation are certainly not novel or revolutionary for the right of parties to have interpretation services exists in the present law.

In the United States today, there are approximately five million people who experience difficulty with the English language. Estimates cover a broad range concerning the number of hearing and speech impaired individuals who may need to avail themselves of a court interpretor to meaningfully participate and understand criminal court proceedings. I recognize that through the promulgation of rules and guidelines, great strides have been made to ensure that certain classes of individuals are assured access to a court interpretor. However, while lauding these efforts, the time has come to provide by statute for the availability and access to qualified interpretors for a broader speetrum of people than present law allows.

It is very diffieult to tell exactly what the scope of the problem addressed by this bill is. Empirieal data on the number of people who are effectively denied their day in court because of some handicap such as speech or hearing impairment

or who do not speak the English language simply is not available or accountable. However, although I cannot point to specific figures, in my conversations with various groups representing the handicapped, it has become clear to me that there have been many instances where people simply have been intimidated by the prospects of not being able to understand the proceedings in our Federal courts and therefore shy away from the courts and do not exercise various rights they may have.

In a time when we are becoming more and more sensitive to the needs of our handicapped and non-English-speaking citizens, it is a shame that in a truly crucial area such as adequate interpretive services in our courts we are still lagging behind what we could provide.

Once we determine that interpreters are necessary we must insure that they are of high quality. Today interpreters are obtained from many and varied sources, often in the absence of minimum qualification standards for their selection. Once selected, there appear to be no established procedures for assessing their effectiveness.

Courts generally consider the quality of interpretation as adequate unless complaints are made. Generally, individuals interviewed and heard from at the Senate hearings believed that the quality of interpretive services provided was adequate. The lack of selection standards found at many courts does not necessarily mean that interpreters used by these courts were unqualified. However, many individuals acknowledged that the quality of service varied considerably among interpreters. The absence of selection standards, the lack of procedures to monitor and detect translation errors, and the practice of some courts to "make due" with bilingual volunteers provide little assurance that accurate translation will be rendered. The courts should strive to provide assurances that translations are accurate, because, if the translations are inaccurate, they will hinder rather than help understand the proceedings. Thus, there is a need for courts at every level to develop, at least, some rudimentary criteria for selecting interpreters, and some level of basic training in court procedure to prevent prejudicial error and protect the integrity of the judicial process. Such need is most critical in trials involving serious criminal offenses.

The Bilingual, Hearing and Speech Impaired Court Interpreters Act provides for the creation of a program in our Federal courts to insure that qualified interpreters are available to all parties needing their assistance. The bill creates two new sections in title 28 of the United States Code which set out the circumstances when interpreters will be provided and spell out what special interpretation services will be available. I urge the subcommittee to expeditiously consider this legislation. As the sponsor of S. 1315, I am not wedded to each and every provision in the bill, but I do feel that the needs the bill is designed to meet are critical and can be met without great difficulty or cost. I would like to again thank the subcommittee for inviting me to appear today.

Appendix 2

Response to Congressman Don Edwards—By Paulette Harary, Court Interpreter, Freehold, N.J.

STATEMENT OF PURPOSE

The need for able, creditable interpreters to function in the United States Courthouses has already been determined. What is immediately necessary is a reliable testing and certification program for interpreters.

This program should have broad participation of all Federal courts. The following outline attempts to develop such a program.

A. Selection of examiners.
B. Formulation of a test.
C. The test.
D. Examination within the individual courthouses.

A. SELECTION OF EXAMINERS

1.a. The United States would be divided into twelve regions. Each region would select one examiner to participate in the development of the examination format and test materials.

1.b. This Committee would have a schedule and tasks to be accomplished in the development of an examination.

1.c. The Government Printing Office, a reputable testing firm and a coordinator will act as advisors and assist the R.E.C. and will announce the dates and conditions of the tests.

1.d. The final format would be given to a District Chief Judge.

2.a. The District Chief Judges may suggest or comment upon the format or questions.

2.b. The District Chief Judge of each courthouse will select a chief interpreter and an assistant who will act as examiners and evaluate the test results. Those interpreters shall be deemed certified.

B. FORMULATION OF THE TEST

The Regional Examination Committee will request examination questions from each Courthouse, in accordance with provisions established in section A herein.

(The categories of questions will be determined by the Regional Examination Committee).

Each courthouse, based upon experience and dialogue with interpreters as well as Assistant United States Attorneys, will submit questions in each category.

The Regional Examination Committee will construct tests from the submitted samplings.

There should be minimal involvement of government agencies (Civil Service Commission) in the preparation, scoring of the tests and the promulgation of lists of certified interpreters.

C. THE TEST

The formulated test, which would eventually be given in each courthouse, would have major parts.

Part I

A multiple choice written would be machine scorable. This part of the examination would be composed of legal terminology, ethical practices, courtroom procedure, English vocabulatry, correct usage and comprehension.

This section would also require the candidate to translate several passages from English into the foreign language and back into English.

Part II

This would be an oral interview section administered by two interpreter-examiners. The material would deal with consecutive translations from a prepared cassette text. The material to be interpreted would be from English to the foreign language and from the foreign language to English.

The examiners would use criteria for satisfactory performance based upon suggestions from a Regional Examination Committee that was designated and appointed by the courts.

Part III

This part would use a closed circuit prepared videotape. The candidate would be expected to interact with a witness or a defendant. The responses would be recorded on a cassette. It must be clearly understood that a rating scale and reasons for failure must be established. In the case of failure of any part of the examination, the candidate may inqiure as to his immediate reasons for failure. The cassette would present unbiased and documentary proof of failure.

The candidate will not be invited to either part II or III unless he is successful with the preceding part. Each part will serve the purpose of screening and elimination.

Training programs and in-service supervision shall be made available to those applicants who have failed or performed below established standards.

D. EXAMINATIONS WITHIN THE INDIVIDUAL COURTHOUSE

1. The Regional Examination Committee will develop the official rules and conditions for testing within the individual courthouse.

2. The Chief Examiner in each district courthouse will be given detailed procedural instructions for testing.

3. Funds will have to be allocated for the chief examiners and assistants in each district courthouse.

4. The courthouse, a school or a local facility may be used for the examination.

TAALS

The American Association of Language Specialists

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YEARBOOK 1978

CONTENTS

THE AMERICAN ASSOCIATION OF LANGUAGE SPECIALISTS (TAALS)

TAALS is the professional association in the Americas that represents language specialists working at the international level, either in conferences or in permanent organizations, and determines their qualifications and standards.

Founded in Washington in 1957, the Association today has a membership of 215 interpreters and translators. They are based in twelve countries of the Western Hemisphere—Argentina, Brazil, Canada, Chile, Colombia, Guatemala, Mexico, Panama, Peru, the United States, Uruguay, Venezuela—and In Europe and Japan as well. Over 40 of them are permanently employed by international organizations, governmental agencies and universities; the others work on a free-lance basis.

The Association vouches for the language competence of its individual members through the rating system used in the present *Yearbook*.

The TAALS standards, both of professional ethics and working conditions, are binding on its members everywhere. All qualified conference-level language specialists are eligible for membership. Applications are accepted up to 1 October, and new members are admitted by a two-thirds majority at the annual General Assembly.

SECRETARIAT

Executive Secretary ..... Idette Johnson Swetye

Assistant Secretaries

Washington ..... Ursula Weide

Latin America ..... Ann E. Bennaton

Membership ..... Imogen Robles de Connor

Yearbook Editor ..... Fernando Morales-Macedo

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INTERNATIONAL ORGANIZATIONS, GOVERNMENTAL AGENCIES, AND UNIVERSITIES EMPLOYING TAALS MEMBERS ON THEIR STAFFS

International Organizations

CIAT
Centro Internacional de Agricultura Tropical.....Colombia

ECLA
Economic Commission for Latin America.....Santiago

IADB
Inter-American Defense Board.....Washington

IADC
Inter-American Defense College.....Washington

ICAO
International Civil Aviation
Organization.....Montreal

ICITO/GATT
Interim Commission for the
International Trade Organization/General
Agreement on Tariffs and Trade.....Geneva

IDB
Inter-American Development Bank.....Washington

IMF
International Monetary Fund.....Washington

INTELSAT
International Telecommunications
Satellite Organization.....Washington

OAS
Organization of American States.....Washington

PAHO/WHO
Pan American Health Organization/
World Health Organization.....Washington

UN
United Nations.....New York

World Bank.....Washington

Governmental Agencies

Argentina
- Ministry of Foreign Affairs ..... Buenos Aires

Canada
- Parliament ..... Ottawa
- Secretary of State ..... Ottawa

United States of America
- Department of Energy (DOE) ..... Washington
- Department of State (USDS) ..... Washington
- Peace Corps ..... Tunis

Universities

City University of New York ..... Bronx, N.Y.

Cornell University ..... Ithaca, N.Y.

El Colegio de México ..... Mexico City

Georgetown University ..... Washington

Johns Hopkins University ..... Washington

Lewis & Clark College ..... Portland, Oregon

McGill University ..... Montreal

New York State University
at Potsdam ..... Potsdam, N.Y.

Sophia University ..... Tokyo

WORKING LANGUAGES OF TAALS MEMBERS

Arabic	Hebrew	Portuguese (Por)
Czech	Hungarian	Rumanian
Dutch	Italian (It)	Russian (Ru)
English (Eng)	Japanese (Jap)	Serbo-Croatian
French (Fr)	Polish	Spanish (Spa)
German (Ger)		Yiddish

INTERPRETERS are rated according to the following language classifications:

A — Principal active language(s) into which they interpret and which they speak as a native.

B — Other active language(s) into which they interpret.

B* — Other active language(s) into which they interpret consecutively only.

C — Language(s) from which they interpret regardless of difficulties of terminology or idiom.

Comparable standards are applied to the language classifications of TRANSLATORS.

THE AMERICAN ASSOCIATION OF LANGUAGE SPECIALISTS (TAALS)

TAALS PROFESSIONAL CODE FOR LANGUAGE SPECIALISTS

I. AIM AND SCOPE

Article 1

(a) This Code sets forth rules of professional conduct for members of the Association.
(b) The purpose of the Code is to ensure professional standards and thereby to encourage the broadest use of language specialists by all who need such services.
(c) Candidates for admission take it upon themselves to observe the Professional Code in its entirety and likewise all other rules and regulations of TAALS.
(d) Members who infringe the Code or who otherwise engage in conduct manifestly injurious to the professional reputation of language specialists may be subject to expulsion from the Association or other penalties the procedures for which are outlined in the Bylaws.

II. CODE OF ETHICS

Article 2

(a) Members of the Association shall be subject to strict professional secrecy. This applies to all information gained while acting in a professional capacity.
(b) No member shall derive personal profit or advantage from any confidential information acquired while acting in a professional capacity.

Article 3

(a) Members of the Association shall refrain from accepting engagements they do not feel qualified to undertake. Acceptance shall be regarded as guaranteeing a high professional standard.
(b) The moral guarantee given by TAALS members under paragraph (a) above also covers the quality of the services rendered by nonmembers who have been engaged on the recommendation of TAALS members.

Article 4

(a) Members shall refuse any employment or position which might prejudice the dignity of the profession or conflict with the observance of professional secrecy.
(b) Members shall refrain from any activities which could bring discredit on the profession, including all forms of personal publicity.

Article 5

(a) Members of the Association pledge their unfailing support to their colleagues and to the profession as a whole.
(b) Any difficulty of a professional nature arising between two or more members may be referred to the Council for arbitration.

III. WORKING CONDITIONS—GENERAL

Article 6

Members of the Association shall refuse to work under conditions not in accordance with those laid down by the Association. (See Appendix.)

IV. CONFERENCE ENGAGEMENTS

Article 7

(a) Members of the Association shall accept a conference engagement only when they are aware of the exact conditions of this engagement and have made sure that their identity and conditions of payment are known to the conference*; when applicable, the Letter of Appointment shall be used in the form drawn up by the Association.
(b) All contracts and payments shall be direct from the conference to the language specialist.
(c) In the case of organizations without a permanent language services structure, services shall be organized by, and language specialists recruited upon the recommendation of, a recognized professional language specialist.
(d) Members shall perform no other conference duties than those for which they are contracted.

Article 8

(a) Each member shall declare one professional domicile. No member may have more than one professional domicile at the same time.
(b) A change in domicile may be effected upon prior written notification to the Executive Secretary. No member shall be permitted to change professional domicile more often than once every six (6) months.

Article 9

Members of the Association may request to be released from a conference engagement only if they are able to:

(a) Give sufficient notice;
(b) Show good cause; and
(c) Propose a substitute acceptable to the conference organizer.

Article 10

(a) A scale of suggested minimum fees is kept by the Association.
(b) The fees are based on a daily rate. A full day's fee shall be payable for each day or fraction thereof covered by the conference engagement.
(c) Fees are quoted in U.S. dollars or their equivalent. The fees shall be transferable to the language specialist's country of domicile.
(d) Members of the Association engaged to work in the same capacity on the same team shall be paid at the same rate.

Article 11

(a) Fees shall be due for the entire period covered by the conference engagement, including Sundays and other nonworking days.
(b) Fees shall be payable in full without deduction of any commission.

Article 12

Members of the Association may give their services free of charge, provided they pay their own travel and subsistence expenses. (The Council may occasionally waive this provision.)

Article 13

Allowances and Fees for Travel Days

(a) Conference engagements away from the place of domicile shall entitle members of the Association to payment of a subsistence allowance (per diem) for each day of absence from the place of domicile and, in addition, a fee for each day required to be spent in travel.

*"Conference" is understood to mean the original organizer; any intermediaries are specifically excluded.

(b) The amounts referred to in (a) above shall be due in full for each day or fraction thereof. Members may, however, agree to payment of two-thirds of the subsistence allowance in the form of full board and lodging.

Article 14

Travel

The mode of travel from domicile to conference, or between consecutive engagements, depends on the practice then current and customary. Members may contact the Association to ascertain the current practice for any given arrangements, and the Association may from time to time publish such practices. In no case, however, may members travel in a mode inferior to that contracted for by the sponsoring organization without the Association's prior consent. (This provision is to be read in conjunction with Article 4 of the Appendix to the Code.)

APPENDIX TO THE PROFESSIONAL CODE FOR LANGUAGE SPECIALISTS

Article 1

Duration of Appointments

All contracts shall specify the exact duration of the appointment and contain a cancellation clause providing for the reimbursement of all substantiated expenses and for the payment of: The total remuneration due if the contract or part thereof is canceled or the meeting is terminated sooner than its final date.

Exception: Organizations which are members of the United Nations family. The cancellation clause in effect for these organizations will be as follows:

(a) 50 percent of the total remuneration due if the contract or part thereof is canceled more than 30 days before its effective date;

(b) The total remuneration due if the contract or part thereof is canceled less than 30 days before its effective date or terminated sooner than its final date.

The above paragraphs shall not be operative if the language specialist is offered equivalent employment for the period in question either by the organization canceling the contract or by a third party, or if the reasons for the termination are of a disciplinary character.

Article 2

Subsistence Allowance (per diem)

The rate of subsistence allowance (per diem) shall be no less than that specified by the United Nations scale of per diem for staff in grades P-3 to P-5.

Article 3

Loss-of-Earning Allowance

Whenever applicable, the allowance payable for the first day spent traveling on the outward and return journey shall be half the suggested minimum fee and all additional travel days shall be payable at the full suggested minimum fee.

Article 4

Air Travel

The language specialist may accept economy-class travel accommodations provided his contract includes days of rest at standard fees and, where applicable, per diem, depending on travel time from downtown air terminal to downtown air terminal. Payments in respect of rest days shall be additional to payments in respect of travel days (see Article 3 above).

Travel Time	No. Rest Days due
9 to 16 hours	One
16 to 21 hours	Two
21 hours or more	Three

Moreover, the contract shall provide for 10 kilos excess baggage allowance in excess of the economy class allowance.

WORKING CONDITIONS FOR INTERPRETERS

1. General:
In the interest of ensuring professional standards, members of the Association shall:

(a) Satisfy themselves that they can see and hear properly;

(b) Warn that simultaneous interpretation without booth may reduce the quality of interpreting below minimum standards;

(c) Endeavor to ensure that interpreting teams are made up in such a way as to avoid regular use of relays.

2. Number of interpreters:

(a) Interpreters shall not work alone with no possibility of relief*.

(b) A minimum of two interpreters per language is required, except for bilingual conferences, in which case a team of three interpreters is acceptable in certain circumstances.

(c) Exceptionally and for short bilingual meetings not exceeding one half-day or one evening, a team of two bilingual interpreters is acceptable.

3. Scale of suggested fees in the Americas:
A list of the suggested minimum daily fees applicable to intergovernmental, governmental, and nongovernmental organizations in the Americas shall be published on January 1 of each year and whenever a fee has been changed.

4 Whispered interpretation:
Whispered interpretation is considered to be from one or two languages into another language, for a maximum of two delegates with or without consecutive interpretation from the latter language: three interpreters at the fees laid down in the list mentioned in Paragraph 3 above.

5. Briefing.

(a) A briefing period of two full days on full pay during which half a day may be a working period shall be provided in the case of all technical and scientific conferences.

(b) The above briefing period may be replaced by an equivalent period of study at home on full pay if the necessary documents are made available for that purpose.

6. Recording:
Interpretation is provided solely for the benefit of the audience. No recording, for whatever purpose, including by members of the audience, may be made without prior consent of the interpreters concerned, who may claim appropriate compensation for such use.

7. Other fees:
In the case of conferences held outside the Americas, the suggested minimum fees shall be those of the International Association of Conference Interpreters (AIIC).

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*In exceptional circumstances, and in the mode of consecutive interpretation, an interpreter may work alone; in such cases he shall be paid double the suggested minimum fee.

WORKING CONDITIONS FOR TRANSLATORS

A. GENERAL

1. In the interest of ensuring professional standards, members of the Association shall endeavor to see that the following conditions prevail in all working situations:

Facilities and Working Area

2. The facilities and physical working area provided for translators shall be adequate to permit the production of translations of proper quality. Either dictation equipment or a typewriter in good condition (electric if the translator so prefers) shall be provided for each translator on duty. If translations are to be dictated, an experienced conference typist with proper knowledge of the target language shall also be available. The working area shall be adequately illuminated and ventilated, and reasonable quiet and privacy shall be ensured. Translators shall not be required to share their working area with any distracting activities.

Time Allowed for Work

3. Translators shall be allowed sufficient time to complete their work, having regard to the nature and length of the text.

Condition of Text to be Translated

4. The material to be translated shall be typewritten or typeset and legible in all respects. A short handwritten text may be accepted in special circumstances, but only if the translator has first satisfied himself that he can read it with no difficulty or possibility of misunderstanding.

Reference Material

5. Translators shall have ready access to the dictionaries they need and, whenever possible, to documents and information (including marked-up copies) required for proper understanding of the text to be translated and production of a good translation.

B. CONFERENCES

6. Members of the Association shall ensure that, in addition to the foregoing general conditions, the following specific conditions with respect to conferences are observed:

Hours of Work

7. The normal working day shall be eight hours. Shift work shall be agreed upon in advance.

Composition of Translation Teams

8. When a conference engages two or more translators to work simultaneously into the same target language, at least one of them shall be accorded the title and duties of "Reviewer" or "Reviser" and paid at an agreed higher rate. A conference may also engage a team composed exclusively of experienced reviewers/revisers.

Working Languages

9. A translator shall not be required to work into languages other than those in which he has an A classification.

Documentation

10. In addition to the reference material mentioned in para. 5 above, background documentation for the conference (special glossaries, reports of previous meetings, documents under consideration, etc.) shall be made available for ready reference.

C. SCALES OF SUGGESTED FEES

11. A scale of suggested minimum daily fees for conference engagements in the Americas shall be published on January 1 of each year and whenever a fee has been changed.
12. The Association shall also publish each year and whenever necessary a scale of suggested minimum fees for non-conference free-lance translation work, which is usually remunerated on a word-count basis.
13. For both conference and non-conference translation work performed outside the Americas, the suggested minimum fees shall be those of the Association, or those of the local professional association of translators, whichever are higher.

D. COPYRIGHT

14. It is understood that translators are entitled to the same protection in respect of their translations as is accorded to authors under international copyright conventions. The translator may, however, voluntarily waive these rights.
15. Where the author(s) of a report, document or article are named, the translator(s) of that publication should be accorded equal mention.

ALPHABETICAL LIST OF MEMBERS

NAME AND ADDRESS	ORGANIZATION	PROFESSIONAL DOMICILE	ENG	FR	GER	IT	JAP	POR	RU	SPA	SPECIALTIES AND OTHER LANGUAGES
ACOSTA, Mrs. Magdalena Urquidi de Apartment 716 4200 Cathedral Avenue, N.W. Washington, D.C. 20016 Tel.: (202) 686-0581		Washington	A A	C C						A A	Interpreter Translator
*ADELO, Dr. Abdallah Samuel Suite 401 320 Galisteo Street Santa Fe, New Mexico 87501 Home: (505) 983-9285 Office: (505) 988-8905	Gulf Companies	Santa Fe	B A			C C		B B		A A	Interpreter Translator Reviewer
AGDSTINI, Mrs. Yvette 1, chemin du Champ-des-Noyers Grand-Lancy CH-1212 Genève, SWITZERLAND Tel.: (022) 43-3594		Geneva	C	A						C	Translator
ALARCÓN, Mr. Sergio M. CDA Rincón de Tlacopac 61 Tlacopac San Angel México 20, D.F., MEXICO Tel.: (905) 550-4713		Mexico City	B B	C C						A A	Interpreter Translator
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*Associate Member

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ARIAS AROSEMENA de OBALDÍA Mrs. Teresita Calle 6a., #50, Altos del Golf, PANAMA or Apartado Postal 7261 Panama 5, PANAMA Tel.: 26-0045		Panama City	B					B		A	Interpreter
*ARJONA, Miss Etilvia 4083 Sunset Lane Pebble Beach, California 93953 Home: (408) 625-2639 Office: (408) 649-3113 x67 Correspondence: P.O. Box 1978 Monterey, California 93940	Monterey Institute	Monterey									Translator
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*Associate Member

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BARBER, John H. 109 Oakley Road Cambridge, Maryland 21613 Tel.: (301) 228-7045		Washington	A							B	Interpreter
BARNABÉ, Mrs. Marta Llovet de Yamandú Rodríguez 1326 Carrasco Montevideo, URUGUAY		Buenos Aires	C C	A A		C C		C C		A A	Interpreter Translator

NAME AND ADDRESS	ORGANIZATION	PROFESSIONAL DOMICILE	ENG	FR	GER	IT	JAP	POR	RU	SPA	SPECIALTIES AND OTHER LANGUAGES
BAYO, Mrs. Ilma Niederheitmann 18 Calle No. 3-75 Zona 14 Guatemala, GUATEMALA Tel.: 68-2746		Guatemala City	A A	C C	C C					A A	Interpreter Translator
BELCHER, Ms. Marila Amcongen Rio de Janeiro, BRAZIL APO New York 09676		Rio de Janeiro	B	C				B #		~~A~~	Interpreter Translator
BELISLE, Ms. Estelle 2710 Jefferson Drive Alexandria, Virginia 22303 Tel.: (703) 960-3395		Washington	A	B						C	Interpreter Translator
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	SELO-FRALIN, Marylou—Aug. 15–Feb. 14
	SHIOMI, Kazuko
	SILHÁNKOVÁ, Liselotte
	SWETYE, Idette
	VALYIOVA, Lisa
	WESTMAN, Donald R.
	WUST, Klaus
	WUST, Monique Fong
Palo Alto (Calif.)	FAGAN, Ted
Philadelphia	LEWIS BONACCORSI, Elvira
Portland	FERRUA, Pietro
San Francisco	KRAKOWSKY, Barbara
	SHANKEN, Flora
Santa Fe (N.M.)	*ADELO, Abdallah Samuel
Washington	ACOSTA, Magdalena Urquidi de
	APRIL. Julia
	BARBER, John H.
	BELISLE, Estelle
	BOURGOIN, Edward
	BOWEN, David } Nov 1–Apr 30
	BOWEN. Margareta } Oct 15–Apr 15
	BRUNS-THÉPAUT, Hélène
	BURRELL-SAHL, Helga
	CARVALHO, J. Ribamar A. de
	CHARRO. Fernando
	CHISMAN, Anna
	CINTRA-ESKENAZI , Elizabeth
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	CONNOR, Imogen
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DOVE, Dolores
FISHKIN, Madeleine
FRENCH, Elena
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GARRIDO, Olga
GAUTIER Max A
GREIG, Barbara
HANSON, Yolanda (as of 1 Oct 1977).
HARWAY, Monique
*HERVAS, Anthony J.
HODGKINSON, Miriam
HOLMES, Tamara
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LABRADA, Emilio
LACHOW, Valentina
LATTER, Natalie
LEDAN, Emmanuel D.
LOBBÉ, Robert C.
McCALL, Joelle
McMILLAN, E. Norman
MAGEE, Richard A.
MARCONDES, Haydée M.
MARCUSE, Gisela
MARTIN, Nataly
MEZA, Barbara de
MORALES-MACEDO, Fernando
MOYENS, H. Marc
MUÑOZ-CARRASCO, Manuel
NARGANES, Aurelio
NEDELCOVIC, Bosco
ORAM, Mary C.
RATINOFF, Glorla
REISMAN-TOOF, Judy
RICHMAN, Brigitta M.
RODRÍGUEZ, Ceferino
RODRÍGUEZ, Pablo
SAAVERDRA, Carmelo
SAGASTI, Elsa H.
SAITO, Yoshihiro
SALINAS-ZEPEDA, Máximo
SCHIAVO, Stênlo A.
*SIERRA, Anthony D.
SIMON, Barbara
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TABARLY, Pierre
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	VALEUR, Michel
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	VAN REIGERSBERG, Stephanie R.
	VASCONCELLOS, Muriel
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	WEIDE, Ursula
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Washington	LENNON, Eleanor

Principles, Guidelines and Standards Proposed for R.I.D., Inc., Accreditation of Interpreter Trainino Proorams by R.I.D., Inc.

I. INTRODUCTION

Communication with other individuals is a vital aspect in the life of every human being. Recently, new public legislation and changing societal attitudes are allowing hearing imparied individuals a greater participation in a society that has long excluded them from its affairs. The Registry of Interpreters for the Deaf, Inc., as an organization committed to quality interpreting for the hearing impaired, has been instrumental in supporting and promoting these changes.

The RID, Inc. was established in 1964 for the purpose of maintaining a registry of interpreters and encouraging the professionalization of heretofore untrained individuals. The certification of interpreters by RID, Inc. was established in 1972 in order to identify persons having achieved a minimum skill level necessary to meet the communication needs of hearing impaired individuals.

With the ever increasing demand for interpreters possessing professional levels of skill, the need for providing educational training has become paramount.

In order to maintain standards and uniformity in the development of programs around the nation, the RID, Inc. is committed to providing guidelines for accreditation purposes which uphold the quality of interpreting services to hearing people, thus providing an opportunity to participate in the affairs of society.

The educational process therefore must provide both an understanding of hearing impaired people and their community, the diversity of language used by hearing impaired people, and the fluent skills necessary to communicate and interpret effectively.

This document has been prepared to give a formal statement of the principles, guidelines, and standards that would pertain to such accreditation. The document is organized under four subtopics; pertinent definitions and clarifications, minimal requirements for those institutions hosting interpreter training programs, minimal requirements for interpreter training programs, and minimal requirements for graduates from interpreter training programs.

II. DEFINITIONS AND CLARIFICATIONS

A. It is important to clarify 1) that certain deaf consumers of interpreting services prefer an *oral interpreter;* 2) that most deaf persons prefer a *simultaneous interpreter,* i.e., an interpreter who mouths what is being said by a talker while also using sign language and/or fingerspelling; 3) that a certain amount of interpreting that occurs for some deaf persons is *strictly manual;* and, 4) that interpreting for certain deaf/blind individuals may include a *tactile* component.

B. It is also important to distinguish between translating and interpreting as these may be done by a qualified interpreter.

In *translating,* the interpreter presents the thoughts and words of the speaker verbatim to the deaf person using the language of signs and/or fingerspelling and/or speech. In *interpreting,* the interpreter may depart from the exact words of the speaker and paraphrase, define, and/or explain what the speaker is saying using the language of signs and/or fingerspelling and/or speech and/or other means of communication. In the case of many deaf adults, translating is what is preferred; in the case of deaf children and deaf youth, interpreting needs to be done quite liberally, keeping the language level of the individuals in mind.

C. The RID defines *an interpreter* as "an individual who qualifies for one of the RID certifications described below or who hold a provisional permit from RID and who adheres to the established code of ethics of RID."

1. *Expressive Translating Certification (ETC)* is awarded by RID to an interpreter who possesses very basic reverse translating competencies and is able to *translate* verbatim and simultaneously from spoken to manual English.

2. *Expressive Interpreting Certification (EIC)* is awarded by RID to an interpreter who possesses very basic reverse interpreting compentencies and is able to use sign language with hearing impaired persons who possess various levels of language competencies.

3. *Oral Specialist Certification(OSC)* will be awarded by RID to interpreters who meet qualifications to be specified before 1978 is over by a committee of oral interpreters and deaf adults who prefer to use the services of oral interpreters. Members of this committee will be named by The Alexander Graham Bell Association for the Deaf (AGBAD) and the National Technical Institute for the Deaf (NTID) with endorsement by RID, but such membership will not be restricted

to persons from AGBAD and NTID. Meanwhile, the accepted definition of *oral interpreting* is "interpreting which includes the use of gesture, facial expression and natural, clear mouth movement to communicate to deaf persons"; and the accepted definition of the *oral method* is "the use of spoken English to communicate to deaf and hearing persons."

4. *Reverse Skills Certification* (*RSC*) is awarded by RID to an interpreter who is able to render manually and/or orally and/or in writing the messages of a hearing impaired person.

5. *Comprehensive Skills Certification* (*CSC*) is currently awarded by RID to an interpreter who has greater proficiency in expressive translating, expressive interpreting and reverse skills than those for ETC, EIC, and RSC as described in 1, 2, and 4 above. When the qualifications for Oral Specialist Certification (OSC) become specified, a higher level of oral interpreting proficiency will also have to be met by an interpreter who is awarded Comprehensive Skills Certification (CSC) by RID.

6. *Legal Specialist Certification* (*LSC*) is awarded by RID to an interpreter who holds the CSC, who qualifies for interpreting in a variety of legal settings, and who can demonstrate that the required interpreting competencies are maintained.

7. *Master Comprehensive Skills Certification* (*MCSC*) is currently awarded by RID to an interpreter who has held the CSC for a minimum of 4 years and who, through re-evaluation, if found to have maintained the levels of proficiency required for CSC.

D. The RID defines *deaf/blind interpreting* as "interpreting which includes some form of tactile or visual communication or a combination of both which are appropriate for deaf persons with vision impairments."

E. The RID defines *minimal language communication* as "using home signs, gestures, pantomime, mime, or any visual mode (drawing pictures, etc.) which communicates information to the individual and using a communication strategy that the individual understands."

F. It is also important to point out that interpreting settings are diverse and that they include settings which are for legal, educational, religious, entertainment, medical, rehabilitation, social work, and mass media purposes. The future may find additional certifications specified by RID for particular settings as has already been done for legal settings.

III. MINIMAL REQUIREMENTS FOR HOST INSTITUTIONS

A variety of postsecondary institutions exists for the hosting of programs for training simultaneous and/or oral interpreters for the hearing impaired. It includes four year colleges and universities, two year community or junior colleges, and technical schools, For any such institution to be granted accreditation by RID for its simultaneous and/or oral interpreter training program, it must meet the minimal requirements specified in this section.

A. The host institution must be accredited by its respective regional accrediting body.

B. The host institution must demonstrate commitment to providing educational and employment opportunities to qualified handicapped individuals through compliance with the rules and regulations of Sections 503 and 504 of the Vocational Rehabilitation Act of 1973.

C. The goals of the host institution must be consistent with the goals and interests of the program for training simultaneous and/or oral interpreters.

D. The host institution must provide a "climate" of openness, acceptance, and flexibility for the challenges presented by the program for training simultaneous and/or oral interpreters.

D. The host institution must provide a "climate" of openness, acceptance, and flexibility for the challenges presented by the program for training simultaneous and/or oral interpreters.

E. The host institution must demonstrate a financial commitment to the continuation of its simultaneous and/or oral interpreter training program.

F. The host institution must have available a variety of resources which support a program for training simultaneous and/or oral interpreters. These resources should include:

1. A range of support courses from which a training program for simultaneous and/or oral interpreters can draw;

2. A capability for interdepartmental cooperation and coordination, e.g., cross registration in different program offerings of the institution;

3. A flexibility that allows adding or changing special course offerings as needed for the program for training simultaneous and/or oral interpreters;
4. A capability of creating new staff responsibilities and of adding and training new staff as the needs of the training program dictates;
5. A capability of providing short-term, non-credit or credited continuing education courses for the interpreters and potential interpreters in the community;
6. A library capability for providing professional books, periodicals, journals, and materials on deafness and the range of achievement of deaf and hard of hearing individuals to the staff and students involved in the program for training simultaneous and/or oral interpreters;
7. A capability of providing audio-visual media, particularly videotape equipment for production of training tapes and self-monitoring possibilities.

G. The host institution must have available a variety of resources within the community served by the institution to support the program for training simultaneous and/or oral interpreters. These resources should include:
1. Community agencies and organizations which augment the training program;
2. Potential adjunct staff members and consultants, including oral and manual deaf and hard of hearing individuals;
3. Employment opportunities for graduates of the program;
4. An active community of deaf persons with whom the trainees can identify socially, recreationally, and culturally; in the training of oral interpreters, opportunity to interrelate with oral deaf adults must be provided;
5. Suitable practicum sites for the trainees.

IV. MINIMAL REQUIREMENTS FOR THE PROGRAM TO TRAIN SIMULTANEOUS AND/OR ORAL INTERPRETERS

Any program designed for the training of simultaneous and/or oral interpreters should meet the minimal requirements specified in this section.

A. The curriculum must demonstrate that it is designed to prepare the trainees to meet one or more of the RID certifications;

B. The admissions policy must be consistent with that of the host institution and yet be flexible enough to accommodate various levels of competence at or above the minimum requirements for entry;

C. The program must include a job placement component;

D. The program must be an independent subsection of an appropriate department of the host institution;

E. The program must demonstrate that its graduates, whether they be oral or simultaneous interpreters, are able to achieve the levels of competence outlined in section V below.

F. Accreditation requirements with respect to personnel for long-term programs for training simultaneous and/or oral interpreters are as follows:
1. Minimally, the staff for the program should be three full-time persons or the equivalent, of which one must be deaf; if the training program includes an emphasis on the training of oral interpreters, the deaf person involved should be capable of operating as an oral deaf adult;
2. The director of any program for training simultaneous interpreters should hold a master's degree, preferably in a professional area related to deafness, and RID's Comprehensive Skills Certification; if the degree held by the individual is not related to deafness, substantial experience in dealing with the deaf should be evident; and the director must assume administrative responsibilities for the program, including developing liaisons with the deaf community and pertinent government agencies; if the program is restricted to the training of oral interpreters, the director should hold a master's degree and RID's Oral Specialist Certification;
3. The trainer/instructor ratio should be no larger than 10:1; each instructor should hold a bachelor's degree or the equivalent, a S.I.G.N. Certificate, and RID's Comprehensive Skills Certification for the training of simultaneous interpreters or RID's Oral Specialist Certification if only oral interpreters are being trained; in addition, each instructor should have a teaching history of no less than 540 hours without supervision or 270 hours under supervision of a person who holds a S.I.G.N. Certificate and RID's CSC; the instructors should assume the traditional teaching responsibilities associated with lectures, laboratories, advisement, and materials and resource development;
4. A media specialist should be assigned to the training program on a full time or part time basis, depending on need;

5. Clerical staff should have sign language competency unless the training program is designed to train oral interpreters only;

6. Part time instructors and/or resource personnel must demonstrate competencies in their respective fields and might serve as guest lecturers, reaction panelists, or practicum aides.

G. Accreditation requirements with respect to personnel for short term programs for training simultaneous and/or oral interpreters are as follows:

1. Minimally, in the case of a program for training simultaneous interpreters the program should have a full-time coordinator who holds a bachelor's degree or equivalent experience, who holds RID's Comprehensive Skills Certification and a S.I.G.N. certificate, and who has a minimum of three years of experience with deaf persons; in the case of a program designed to train oral interpreters only, the coordinator should meet these same requirements except that RID's Oral Specialist Certification would be the only required certification;

2. The coordinator should plan and schedule short term training programs; develop appropriate liaisons with program sponsors and consultants; and be responsible for advertising and recruitment, budget management, skills assessment, and teaching;

3. Additional instructors or part-time staff persons should meet the same requirements specified in section IV. F. above.

V. MINIMAL REQUIREMENTS FOR THE GRADUATES FROM PROGRAMS FOR TRAINING SIMULTANEOUS AND/OR ORAL INTERPRETERS

Certain specifications with respect to skills, attitudes, and knowledge of graduates from interpreter training programs will be stressed as a part of the RID accreditation process. This section is devoted to those specifications.

A. Skills

1. All certifiable graduates from programs for training simultaneous and/or oral interpreters will demonstrate the following competencies: (*a*) An ability to arrange appropriate interpersonal environmental conditions (e.g., lighting, seating, and mechanics) in response to one-to-one or group situations; (*b*) An ability to effectively transmit the style, mood, and intent of the communicators; (*c*) An ability to apply appropriate auditory and visual memory techniques as they apply to interpreting and translating; (*d*) An ability to use appropriate signing and/or public speaking techniques as they apply to interpreting and translating; (*e*) An ability to use the existing variety of telecommunication devices; (*f*) An ability to select the appropriate language and/or communication system for given situations (NOTE: for oral interpreters this would include the ability to select a level of English syntax and vocabulary which is appropriate for the skill level of the speechreader);

2. All certifiable graduates from a program designed to train oral interpreters will also demonstrate an ability to rephrase sentences, retaining their original meaning, for higher visibility in speechreading;

3. All certifiable graduates from a program designed to train simultaneous interpreters will also demonstrate the following competencies: (*a*) An ability to use conversational ASL; (*b*) An ability to use conversational manually coded English; (*c*) An ability to translate a message from one mode (spoken/manual) to another (manual/spoken or spoken/spoken) in a quasi-simultaneous manner; (*d*) An ability to interpret from one language (ASL or English) to another (English or ASL) consecutively; (*e*) An ability to select the appropriate level of English syntax and vocabulary as it applies to interpreting for deaf children, deaf youth, or deaf adults.

B. Attitudes

1. All certifiable graduates from programs for training simultaneous and/or oral interpreters will demonstrate the following attitudes: (*a*) A continuing interest in and evidence of developing and upgrading their professional competencies; (*b*) An interest in and evidence of performing their functions in accordance with national, state, and local guidelines, regulations, and ethics; (*c*) A recognition of their personal performance strengths, weaknesses and limitations; (*d*) An interest in and evidence of fostering healthy interpersonal relationships.

2. All certifiable graduates form a program designed to train oral interpreters will also demonstrate the following attitudes: (*a*) A strong support to pertinent professional organizations with special interest in promoting speech, speechreading and use of residual hearing; (*b*) a high interest in and evidence of relating to hearing impaired individuals of various ages and interests in the community who

rely on speechreading, with or without the supplement of hearing, as their primary mode of communication; (*c*) A strong willingness to work with speechreaders manifesting a variety of levels of competency.

3. All certifiable graduates from a program designed to train simultaneous interpreters will also demonstrate the following attitudes: (*a*) A strong support to pertinent professional organizations related to deafness, interpreting, sign language, or oralism; (*b*) A strong interest in and involvement with the national and local deaf communities; (*c*) A strong willingness to work with a variety of sign language or other communicative strategies such as gestures and the oral method.

C. Knowledge

1. All certifiable graduates from programs for training simultaneous and/or oral[1] interpreters will know about the following: (*a*) The principles of communicative and interpersonal dynamics; (*b*) The principles of interpreting and translating; (*c*) The respective roles of interpreters and translators; (*d*) The psycho-social aspects of issues related to deafness; (*e*) Situational processes and protocol; (*f*) Professional organizational activities, certificates, publications and educational and work environments related to hearing impaired (deaf and hard of hearing) children, youth, and adults; (*g*) Hearing aids and their usage; (*h*) Audiology, speech pathology, and various etiologies of deafness; (*i*) The variety of telecommunication devices; (*j*) Current trends and issues in education of the hearing impaired (deaf and hard of hearing).

2. All certifiable graduates from a program designed to train oral interpreters will also know about the following: (*a*) Existing formal systems of lipreading (speechreading) instruction; (*b*) Homophemes (look-alike words) and words with low visibility and how to rephrase for added comprehension; (*c*) The broad range of responsive behavior among individuals with hearing loss of varying degrees; (*d*) Integration of hearing impaired children in regular classes, theory and practice, and integration and assimilation as processes.

3. All certifiable graduates from a program designed to train simultaneous interpreters will also know about the following: (*a*) The linguistics of ASL and English; (*b*) The history of the development of manual/visual language.

REGISTRY OF INTERPRETERS FOR THE DEAF, INC.

REGIONAL DIRECTORY:

Interpreting Information
State Chapters and Officers
State Interpreting Laws
Certified Interpreters

REGION IV

Alabama, Florida, Georgia, Kentucky, Mississippi,
North Carolina, South Carolina, Tennessee

January, 1978

The publication of Regional Directories was made possible by funding from the Office for Handicapped Individuals - No. SA-6911-75

Office of Human Development
Office of the Secretary
U.S. Dept. of Health, Education and Welfare

FOREWARD

The R.I.D., Inc. Regional Directory has been designed to provide information on interpreting services and certified interpreters for Agencies and Individuals who serve the hearing-impaired. The Directory provides not only a ready reference for certified interpreters but also answers often asked questions about interpreting services.

The R.I.D. is most appreciative to the Office for Handicapped Individuals (Office of Human Development - Office of the Secretary of Health, Education and Welfare) for assistance in making this regional directory available.

James Stangarone

President

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GENERAL INFORMATION

Organization

The Registry of Interpreters for the Deaf was established in 1964 through support from the Vocational Rehabilitation Administration Department of Health, Education and Welfare. In October, 1972, the R.I.D. was incorporated pursuant to the General Non-Profit Corporation Law of the State of California within the meaning of Section 501 (c) (3) of the Internal Revenue Code of 1954.

The Organization is governed by a Board of Directors. Current Board of Directors are:

James Stangarone - (New York RID) President & Coordinator of Publications
Betty Edwards - (Florida RID) Secretary & Liaison Representative with other Organizations
Roy Holcomb - (NORCRID) Treasurer
Agnes Foret - (Michigan RID) Chairperson of the National Review Board & Archivist
Will Madsen - (Potomac RID) Coordinator for International Affairs
Evelyn Zola - (Wisconsin RID) Chairperson of the National Certification Board

A national office is maintained in Washington, D. C. on the campus of Gallaudet College. Mrs. Edna Kahl is the Secretary/Bookkeeper. All correspondence should be addressed to the RID, Inc., P.O. Box 1339, Washington, D. C. 20013. Phone messages can be directed to the office by calling (202) 447-0511 (voice or TTY).

Organizational Structure

The RID, Inc. has chapters in 46 states, the District of Columbia, the trust Territory of Guam and 2 chapters in Canada. The local chapters are the life-blood of the Organization and carry-out the common goals related to interpreters and interpreting.

The national office is the facilitating agent and maintains a low-profile in order to maintain a proper perspective on interpreting.

Code of Ethics

Preamble

Recognizing the unique position of an interpreter in the life of a deaf person, the Registry of Interpreters for the Deaf sets forth the following principles of ethical behavior which will protect both the deaf person and the interpreter in a profession that exists to serve those with a communication handicap.

In the pursuit of this profession in a democratic society it is recognized that through the medium of interpreters, deaf persons can be granted equality with hearing persons in the matter of their right of communication.

It is further recognized that the basic system for self-regulation governing the professional conduct of the interpreter is the same as that governing the ethical conduct of any business or profession with the addition of stronger emphasis on the high ethical characteristics of the interpreter's role in helping an oftentime misunderstood group of people.

The standards of ethical practice set forth below encourage the highest standards of conduct and outline basic principles for the guidance of the interpreters.

Code of Ethics

1. The interpreter shall be a person of high moral character, honest, conscientious, trustworthy and of emotional maturity. He shall guard confidential information and not betray confidences which have been entrusted to him.

2. The interpreter shall maintain an impartial attitude during the course of his interpreting avoiding interjecting his own views unless he is asked to do so by a party involved.

3. The interpreter shall interpret faithfully and to the best of his ability, always conveying the thought, intent and spirit of the speaker. He shall remember the limits of his particular function and not go beyond his responsibility.

4. The interpreter shall recognize his own level of proficiency and use discretion in accepting assignments, seeking for the assistance of other interpreters when necessary.

5. The interpreter shall adopt a conservative manner of dress upholding the dignity of the profession and not drawing undue attention to himself.

6. The interpreter shall use discretion in the matter of accepting compensation for services and be willing to provide services in situations where funds are not available. Arrangements should be made on a professional basis for adequate remuneration in court cases comparable to that provided for interpreters of foreign languages.

7. The interpreter shall never encourage deaf persons to seek legal or other decisions in their favor merely because the interpreter is sympathetic to the handicap of deafness.

8. In the case of legal interpreting, the interpreter shall inform the court when the level of literacy of the deaf person involved is such that literal interpretation is not possible and the interpreter is having to grossly paraphrase and restate both what is said to the deaf person and what he is saying to the court.

9. The interpreter shall attempt to recognize the various types of assistance needed by the deaf and do his best to meet the particular need. Those who do not understand the language of signs may require assistance through written communication. Those who understand manual communication may be assisted by means of translating (rendering the original presentation verbatim), or interpreting (paraphrasing, defining, explaining, or making known the will of the speaker without regard to the original language used).

10. Recognizing his need for professional improvement, the interpreter will join with professional colleagues for the purpose of sharing new knowledge and developments, to seek to understand the implications of deafness and the deaf person's particular needs, broaden his education and knowledge of life, and develop both his expressive and his receptive skills in interpreting and translating.

11. The interpreter shall seek to uphold the dignity and purity of the language of signs. He shall also maintain a readiness to learn and to accept new signs, if these are necessary to understanding.

12. The interpreter shall take the responsibility of educating the public regarding the deaf whenever possible recognizing that many misunderstandings arise because of the general lack of public knowledge in the area of deafness and communication with the deaf.

Certification Program

The National Certification Program was established to identify highly qualified interpreters so that hearing and hearing impaired individuals and agencies can be assured of the best interpreting services possible.

The RID awards one or more of five certificates to interpreters who attain passing scores on each section of the certification examination. Thus, the certification indicates that a person has met minimal standards in interpreting skills

and does not attempt to qualify the skills beyond the minimal competency level.

Certification Examination
(Evaluation is given in the skill areas identified by an X).

General

Certification Awarded	INT	EI	ET	RI	RT	OP
ETC	X	X		X		X
EIC	X		X		X	X
CSC	X	X	X	X	X	X
RSC	X			X	X	X

Specialist

Certification Awarded	INT	LEGAL TERMS	S. VOC	EX. SKILLS	RES. SKILLS	OP
LSC	X	X	X	X	X	X

KEY:
INT = Interview
EI = Expressive Interpreting
ET = Expressive Translating
RI = Reverse Interpreting
RT = Reverse Translating
OP = Overall Performance
S. Voc. = Signed Vocabulary
L. T. = Legal Terms
Ex. Skills = Expressive Interpreting and Translating
Res. Skills = Reverse Interpreting and Translating

Certifications Issued:

ETC - Expressive Translating Certification
Ability of the interpreter to simultaneously translate from spoken to manual English (verbatim). The interpreter possesses very basic reverse translating competencies.

EIC - Expressive Interpreting Certification
Ability of the interpreter to use Sign Language with hearing-impaired persons who possess various levels of language competencies. The interpreter also has basic reverse interpreting competencies.

CSC - Comprehensive Skills Certification
Includes proficiency in:

Expressive Translating - (ability to simultaneously translate from spoken to manual English - verbatim.)

Expressive Interpreting - (ability to use sign language with hearing-impaired persons who possess various levels of language competence.)

Reverse Skills - (ability to render - manually, orally, or written - a hearing-impaired person's message.)

RSC - Reverse Skills Certification
Ability to render (manually, orally, or written) a hearing-impaired person's message.

LSC - Legal Specialist Certification
Includes Comprehensive Skills plus specialized evaluation to qualify for interpreting in a variety of legal settings. This legal certification is based on the premise that Comprehensive Skills Certification has been awarded and that the interpreting skills competencies are maintained.

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Evaluations for certification are held at the local level by an authorized Evaluation Team which represents the National Certification Board.

Most RID Chapters have an Evaluation Team and schedule evaluations from time to time throughout the year. The Evaluation Team does not score or certify but provides the National Certification Board with the necessary information upon which to issue a certificate.

The certification is good for 5 years as long as the interpreter keeps his/her membership current or pays an annual certification revalidation fee.

Provisional Permits issued:

In order to meet the demand for certified interpreters, the RID, Inc. issues Provisional Permits to interpreters who have a knowledge of sign language and beginning interpreting skills. The holder of the permit serves an apprenticeship (one year or less) prior to applying for certification. The skill competencies of an individual applying for the Provisional Permit are verified either by two certified interpreters or by the Director/Instructor of an established interpreter training program.

- Provisional Permit - (Experience in General interpreting)
- Legal Provisional Permit - (Experience in Legal interpreting)

Additional Facts

The National RID Office in conjunction with one of its local chapters hosts a biennial convention. This is done to enable interpreters to come together to renew and review their competencies in keeping with the signs of the times. In addition, local chapters have a variety of meetings to assist interpreters in their professional growth and development.

- The Interprenews, a quarterly publication provides a vehicle for interpreters to keep abreast of activities in the field.

Statistics

Membership --- 3,341

Chapters --- 60 in 46 states and the District of Columbia

Certificates Awarded to 12/31/77---1,540

Single Certification:

Comprehensive Skills Certificate - 586
Expressive Translating Certificate - 72
Expressive Interpreting Certificate - 105
Reverse Skills Certificate - 381

Combined Certifications:

ETC - EIC --- 277
ETC - EIC - RSC --- 29
ETC - RSC --- 4
EIC - RSC --- 19
Legal Certification --- 67
Provisional Permits --- 55

SPECIFIC INFORMATION

Interpreting Services

WHO IS AN INTERPRETER?

An interpreter is an individual who:

- possesses skill in the language of signs and finger-spelling
- can convey a hearing person's message to a deaf person
- can convey a deaf person's message to a hearing person

WHERE ARE INTERPRETING SERVICES UTILIZED?

An interpreter works in a variety of settings:

legal	medical
social work	religious
educational	cultural
vocational	mass media
rehabilitation	conference

etc.

WHY DOES A DEAF PERSON NEED AN INTERPRETER?

A deaf person may need an interpreter because of:

- difficulties with speech
- lipreading problems
- limited knowledge of English language
- desires for community services which are often closed to him/her

WHAT IS TRANSLATING?.....INTERPRETING?

In translating, the thoughts and words of the speaker are presented verbatim to the deaf person using the language of signs, fingerspelling, and speech.

In interpreting, the interpreter may depart from the exact words of the speaker and paraphrase, define, and/or explain what the speaker is saying using the language of signs, fingerspelling, speech, and/or other means of communication.

WHO DOES THE INTERPRETER SERVE?

- The Hearing-Impaired Community:
  - A deaf person who uses various means of communication
  - A deaf person who is oral
  - A deaf-blind person
- The Public:
  - A person that is unable to communicate with a deaf individual
  - Agency personnel that is unable to communicate with a deaf individual

WHAT IS THE REIMBURSEMENT FOR INTERPRETING SERVICES?

Interpreters are to be paid for the service rendered. As in any professional organization, many hours of volunteer service is given by the members. However, since interpreters often take off from work, need to arrange for baby-

sitting services, travel great distances to provide the service and are saddled with lunch and parking fees, etc., just reimbursement must be considered.

Since the RID is often asked to quote fees for interpreters for deaf people, the following Suggested Fee Schedule was developed by the RID Executive Board and was approved by a vote of RID members. It should be noted that fees vary according to type of assignment and interpreter's certification. The fees outlined below are suggestions; the RID and member interpreters recognize that each interpreting situation is different and that adjustments in fees may be made.

SUGGESTED FEE SCHEDULE
(Revised 1973)

Interpreters Holding R.I.D. Certification:

CSC: Comprehensive Skills Certificate
RSC: Reverse Skills Certificate
ETC: Expressive Translating Certificate
EIC: Expressive Interpreting Certificate

Interpreters Not Holding R.I.D. Certification:

NCI: Non Certified Interpreter

1. OCCASIONAL Interpreting Assignments

   a. CSC and RSC: Minimum three hours per "call".
      ETC AND EIC: Minimum two hours per "call".

b. CSC and RSC: $11.25 to $15.00 per hour, according to experience/qualifications.
ETC and/or EIC: $10.00 per hour.
NCI: Minimum of $5.00 to $7.50 per hour.

c. CSC and RSC: Maximum $75.00 for "full day" assignments.
ETC and/or EIC: Maximum $50.00 for "full day" assignments.
No more than six hours actual interpreting time.

2. CONFERENCES of Two or More Days Duration

a. CSC and RSC: $75.00 per day; $375.00 per 5-day week.
ETC and EIC: $50.00 per day; $250.00 per 5-day week.

PLUS

b. Travel expenses and per diem at prevailing agency rate.

3. CONTRACT Interpreting

a. 15 hours or less per week on regular assignment basis.

b. CSC and RSC: $11.75 to $15.00 per hour according to experience/qualifications.
ETC and/or EIC: $10.00 per hour.

4. FULL TIME Interpreting

   a. 4 hours daily or twenty hours weekly per 5-day week.

   b. CSC and RSC: $260.00 per week.
      ETC AND EIC: $200.00 per week.

      PLUS

   c. Fringe benefits or salary commensurate to that of other professional staff within the agency.

HOW ARE CERTIFIED RID MEMBERS IDENTIFIED?

The National RID Office issues a blue membership card which identifies that the member is in good standing for the current fiscal year. An additional card is issued which shows the certification that a member holds.

In identifying certified members, both cards should be shown by the member upon request.

HOW MAY INTERPRETERS BE CONTACTED?

Interpreting services may be obtained in the following ways by:

- contacting your local RID Chapter office given in this book (if identified).
- contacting your RID Chapter President.
- contacting one of the interpreters listed in this book directly.
- contacting the National RID Office.

- Contacting a referral agency serving the deaf community. (Within the past 2 years a number of referral agencies have been established.)

HOW MAY MORE INFORMATION ON INTERPRETING SERVICES BE OBTAINED?

The local RID Chapter is the first contact for additional information. If the local chapter cannot fulfill the needs, then contact the National RID Office.

CERTIFIED INTERPRETERS

The following pages of this Directory only includes those current members who are certified by the National RID Certification Board. There are other RID members not yet certified living in the region. Their names are only published in the general RID Directory.

R.I.D. CHAPTERS

There may be states listed that have an official chapter but no certified members at this time, as well as states listed who have certified members but no official chapter at this time.

ALABAMA CHAPTER

Alabama Registry of Interpreters for the Deaf
(ALRID)

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Hm (205) 378-3621

Treasurer
Earl Birdwell
P.O. Box 457
Talladega, Alabama 35160

ALABAMA

Alabama State Interpreter Law

Scope: Court may appoint interpreter for deaf party or witness in civil or criminal proceeding.

Payment: By state.

Qualifications: Interpreter must be adept and fluent in sign language and must be approved by Alabama Association for the Deaf.

Statute: Alabama Code 7§436 ; 4A§446
Alabama Rules of Civil Proceeding 43(f)

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FLORIDA

Florida State Interpreter Law

Scope: Interpreter must be appointed for deaf witness in:

1. grand jury proceeding
2. criminal action
3. civil action

Payment: Not stated.

Qualifications: Interpreter must be qualified by knowledge, skill, experience, training or education.

Statute: Florida Statutes Annotated § 90.606 ; § 905.15.

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ALTOM, Grady
CSC
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Georgia Registry of Interpreters for the Deaf

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GEORGIA

Georgia State Interpreter Law

Scope: Interpreter must be appointed for deaf party or witness in any

1. grand jury proceeding
2. criminal proceeding
3. civil proceeding
4. administrative proceeding
5. pre-trial interrogation

of deaf criminal defendant.

Payment: By the county in which proceeding occurs.

Qualifications: Interpreter must be either certified by National RID or Georgia RID. When certified interpreter is unavailable, appointing authority must determine his qualifications.

Statute: Georgia Code Annotated §§ 99 4001 - 4006.

GEORGIA

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KENTUCKY CHAPTER

Kentucky Registry of Interpreters
for the Deaf

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Wk (502) 745-2695

Treasurer
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Danville, Kentucky 40422
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Wk (606) 236-5132

KENTUCKY

Kentucky State Interpreter Law

Scope: Interpreter must be appointed for deaf parties or witnesses:

1. At all stages of criminal, juvenile or mental inquest cases
2. At administrative agency proccedings
3. At pre-trial interrogation of deaf criminal defendant.

Interpreter may be appointed in civil cases.

Payment: State pays for interpreter in criminal, juvenile and mental inquest cases and administrative hearings. In civil cases, court determines whether losing party or state pays.

Qualifications: Appointing authority must make a preliminary determination that interpreter can readily communicate with and from state sentences of deaf person. Kentucky RID or School for the Deaf can recommend qualified interpreters.

Statute: Kentucky Revised Statute
§ 28-652 thru 658

KENTUCKY

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MISSISSIPPI

Mississippi State Interpreter Law

Scope: Interpreter must be appointed for deaf party or witness in "any legal proceeding of any nature" including administrative proceedings.

Payment: If deaf person is plaintiff he pays.
If deaf person is defendant, fee is treated as other court costs.
If deaf person is non-party witness, fee is paid by the party calling the witness.

Qualifications: Interpreter must be "qualified".

Statute: Mississippi Code Annotated §13-1-16.

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NORTH CAROLINA

North Carolina State Interpreter Law

Scope: Any court legal proceedings of any nature, court appoints interpreter for deaf party or witness.

Payment: By county in criminal and mental commitment cases. Civil cases treated as court cost.

Qualifications: Must be qualified.

Statute: North Carolina Statute § 8A-1.

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SOUTH CAROLINA

South Carolina State Interpreter Law

Scope: Court may appoint interpreter for deaf party or witness to any criminal or civil legal proceeding.

Payment: By state.

Qualifications: Interpreter must be approved by either South Carolina or National RID.

Statute: South Carolina Code § 10-1211

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TENNESSEE

Tennessee State Interpreter Law

Scope: Interpreter must be appointed for deaf party or witness in:

1. criminal trials
2. civil trials
3. grand jury proceedings
4. administrative agency proceedings
5. pre-trial interrogation of deaf criminal defendant.

Payment: By appointing authority

Qualifications: Interpreter must be certified by National RID, if available. Interpreter with Legal Skills Certificate should first be sought. Appointing authority and deaf person must first determine that interpreter can readily communicate with and interpret the statements of and proceedings to the deaf person.

Statute: Tennessee Code Annotated §24-108

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REGISTRY OF INTERPRETERS FOR THE DEAF, INC.

REGIONAL DIRECTORY:

Interpreting Information
State Chapters and Officers
State Interpreting Laws
Certified Interpreters

REGION V

Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

January, 1978

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Office of Human Development
Office of the Secretary
U.S. Dept. of Health, Education and Welfare

FOREWARD

The R.I.D., Inc. Regional Directory has been designed to provide information on interpreting services and certified interpreters for Agencies and Individuals who serve the hearing-impaired. The Directory provides not only a ready reference for certified interpreters but also answers often asked questions about interpreting services.

The R.I.D. is most appreciative to the Office for Handicapped Individuals (Office of Human Development - Office of the Secretary of Health, Education and Welfare) for assistance in making this regional directory available.

James Stangarone

President

TABLE OF CONTENTS

GENERAL INFORMATION

Organization

The Registry of Interpreters for the Deaf was established in 1964 through support from the Vocational Rehabilitation Administration Department of Health, Education and Welfare. In October, 1972, the R.I.D. was incorporated pursuant to the General Non-Profit Corporation Law of the State of California within the meaning of Section 501 (c) (3) of the Internal Revenue Code of 1954.

The Organization is governed by a Board of Directors. Current Board of Directors are:

James Stangarone - (New York RID) President & Coordinator of Publications
Betty Edwards - (Florida RID) Secretary & Liaison Representative with other Organizations
Roy Holcomb - (NORCRID) Treasurer
Agnes Foret - (Michigan RID) Chairperson of the National Review Board & Archivist
Will Madsen - (Potomac RID) Coordinator for International Affairs
Evelyn Zola - (Wisconsin RID) Chairperson of the National Certification Board

A national office is maintained in Washington, D. C. on the campus of Gallaudet College. Mrs. Edna Kahl is the Secretary/Bookkeeper. All correspondence should be addressed to the RID, Inc., P.O. Box 1339, Washington, D. C. 20013. Phone messages can be directed to the office by calling (202) 447-0511 (voice or TTY).

Organizational Structure

The RID, Inc. has chapters in 46 states, the District of Columbia, the trust Territory of Guam and 2 chapters in Canada. The local chapters are the life-blood of the Organization and carry-out the common goals related to interpreters and interpreting.

The national office is the facilitating agent and maintains a low-profile in order to maintain a proper perspective on interpreting.

Code of Ethics

Preamble

Recognizing the unique position of an interpreter in the life of a deaf person, the Registry of Interpreters for the Deaf sets forth the following principles of ethical behavior which will protect both the deaf person and the interpreter in a profession that exists to serve those with a communication handicap.

In the pursuit of this profession in a democratic society it is recognized that through the medium of interpreters, deaf persons can be granted equality with hearing persons in the matter of their right of communication.

It is further recognized that the basic system for self-regulation governing the professional conduct of the interpreter is the same as that governing the ethical conduct of any business or profession with the addition of stronger emphasis on the high ethical characteristics of the interpreter's role in helping an oftentime misunderstood group of people.

The standards of ethical practice set forth below encourage the highest standards of conduct and outline basic principles for the guidance of the interpreters.

Code of Ethics

1. The interpreter shall be a person of high moral character, honest, conscientious, trustworthy and of emotional maturity. He shall guard confidential information and not betray confidences which have been entrusted to him.

2. The interpreter shall maintain an impartial attitude during the course of his interpreting avoiding interjecting his own views unless he is asked to do so by a party involved.

3. The interpreter shall interpret faithfully and to the best of his ability, always conveying the thought, intent and spirit of the speaker. He shall remember the limits of his particular function and not go beyond his responsibility.

4. The interpreter shall recognize his own level of proficiency and use discretion in accepting assignments, seeking for the assistance of other interpreters when necessary.

5. The interpreter shall adopt a conservative manner of dress upholding the dignity of the profession and not drawing undue attention to himself.

6. The interpreter shall use discretion in the matter of accepting compensation for services and be willing to provide services in situations where funds are not available. Arrangements should be made on a professional basis for adequate remuneration in court cases comparable to that provided for interpreters of foreign languages.

7. The interpreter shall never encourage deaf persons to seek legal or other decisions in their favor merely because the interpreter is sympathetic to the handicap of deafness.

8. In the case of legal interpreting, the interpreter shall inform the court when the level of literacy of the deaf person involved is such that literal interpretation is not possible and the interpreter is having to grossly paraphrase and restate both what is said to the deaf person and what he is saying to the court.

9. The interpreter shall attempt to recognize the various types of assistance needed by the deaf and do his best to meet the particular need. Those who do not understand the language of signs may require assistance through written communication. Those who understand manual communication may be assisted by means of translating (rendering the original presentation verbatim), or interpreting (paraphrasing, defining, explaining, or making known the will of the speaker without regard to the original language used).

10. Recognizing his need for professional improvement, the interpreter will join with professional colleagues for the purpose of sharing new knowledge and developments, to seek to understand the implications of deafness and the deaf person's particular needs, broaden his education and knowledge of life, and develop both his expressive and his receptive skills in interpreting and translating.

11. The interpreter shall seek to uphold the dignity and purity of the language of signs. He shall also maintain a readiness to learn and to accept new signs, if these are necessary to understanding.

12. The interpreter shall take the responsibility of educating the public regarding the deaf whenever possible recognizing that many misunderstandings arise because of the general lack of public knowledge in the area of deafness and communication with the deaf.

Certification Program

The National Certification Program was established to identify highly qualified interpreters so that hearing and hearing impaired individuals and agencies can be assured of the best interpreting services possible.

The RID awards one or more of five certificates to interpreters who attain passing scores on each section of the certification examination. Thus, the certification indicates that a person has met minimal standards in interpreting skills

and does not attempt to qualify the skills beyond the minimal competency level.

Certification Examination
(Evaluation is given in the skill areas identified by an X).

General

Certification Awarded	INT	EI	ET	RI	RT	OP
ETC	X	X		X		X
EIC	X		X		X	X
CSC	X	X	X	X	X	X
RSC	X			X	X	X

Specialist

Certification Awarded	INT	LEGAL TERMS	S. VOC	EX. SKILLS	RES. SKILLS	OP
LSC	X	X	X	X	X	X

KEY:
INT = Interview
EI = Expressive Interpreting
ET = Expressive Translating
RI = Reverse Interpreting
RT = Reverse Translating
OP = Overall Performance
S. Voc. = Signed Vocabulary
L. T. = Legal Terms
Ex. Skills = Expressive Interpreting and Translating
Res. Skills = Reverse Interpreting and Translating

Certifications Issued:

ETC - Expressive Translating Certification
Ability of the interpreter to simultaneously translate from spoken to manual English (verbatim). The interpreter possesses very basic reverse translating competencies.

EIC - Expressive Interpreting Certification
Ability of the interpreter to use Sign Language with hearing-impaired persons who possess various levels of language competencies. The interpreter also has basic reverse interpreting competencies.

CSC - Comprehensive Skills Certification
Includes proficiency in:

Expressive Translating - (ability to simultaneously translate from spoken to manual English - verbatim.)

Expressive Interpreting - (ability to use sign language with hearing-impaired persons who possess various levels of language competence.)

Reverse Skills - (ability to render - manually, orally, or written - a hearing-impaired person's message.)

RSC - Reverse Skills Certification
Ability to render (manually, orally, or written) a hearing-impaired person's message.

LSC - Legal Specialist Certification
Includes Comprehensive Skills plus specialized evaluation to qualify for interpreting in a variety of legal settings. This legal certification is based on the premise that Comprehensive Skills Certification has been awarded and that the interpreting skills competencies are maintained.

Evaluations for certification are held at the local level by an authorized Evaluation Team which represents the National Certification Board.

Most RID Chapters have an Evaluation Team and schedule evaluations from time to time throughout the year. The Evaluation Team does not score or certify but provides the National Certification Board with the necessary information upon which to issue a certificate.

The certification is good for 5 years as long as the interpreter keeps his/her membership current or pays an annual certification revalidation fee.

Provisional Permits issued:

In order to meet the demand for certified interpreters, the RID, Inc. issues Provisional Permits to interpreters who have a knowledge of sign language and beginning interpreting skills. The holder of the permit serves an apprenticeship (one year or less) prior to applying for certification. The skill competencies of an individual applying for the Provisional Permit are verified either by two certified interpreters or by the Director/Instructor of an established interpreter training program.

- Provisional Permit - (Experience in General interpreting)
- Legal Provisional Permit - (Experience in Legal interpreting)

Additional Facts

The National RID Office in conjunction with one of its local chapters hosts a biennial convention. This is done to enable interpreters to come together to renew and review their competencies in keeping with the signs of the times. In addition, local chapters have a variety of meetings to assist interpreters in their professional growth and development.

- The Interprenews, a quarterly publication provides a vehicle for interpreters to keep abreast of activities in the field.

Statistics

Membership --- 3,341

Chapters --- 60 in 46 states and the District of Columbia

Certificates Awarded to 12/31/77---1,540

Single Certification:

Comprehensive Skills Certificate - 586
Expressive Translating Certificate - 72
Expressive Interpreting Certificate - 105
Reverse Skills Certificate - 381

Combined Certifications:

ETC - EIC --- 277
ETC - EIC - RSC --- 29
ETC - RSC --- 4
EIC - RSC --- 19
Legal Certification --- 67
Provisional Permits --- 55

SPECIFIC INFORMATION

Interpreting Services

WHO IS AN INTERPRETER?

An interpreter is an individual who:

- possesses skill in the language of signs and finger-spelling
- can convey a hearing person's message to a deaf person
- can convey a deaf person's message to a hearing person

WHERE ARE INTERPRETING SERVICES UTILIZED?

An interpreter works in a variety of settings:

legal	medical
social work	religious
educational	cultural
vocational rehabilitation	mass media conference

etc.

WHY DOES A DEAF PERSON NEED AN INTERPRETER?

A deaf person may need an interpreter because of:

- difficulties with speech
- lipreading problems
- limited knowledge of English language
- desires for community services which are often closed to him/her

WHAT IS TRANSLATING?.....INTERPRETING?

In translating, the thoughts and words of the speaker are presented verbatim to the deaf person using the language of signs, fingerspelling, and speech.

In interpreting, the interpreter may depart from the exact words of the speaker and paraphrase, define, and/or explain what the speaker is saying using the language of signs, fingerspelling, speech, and/or other means of communication.

WHO DOES THE INTERPRETER SERVE?

- The Hearing-Impaired Community:
  - A deaf person who uses various means of communication
  - A deaf person who is oral
  - A deaf-blind person
- The Public:
  - A person that is unable to communicate with a deaf individual
  - Agency personnel that is unable to communicate with a deaf individual

WHAT IS THE REIMBURSEMENT FOR INTERPRETING SERVICES?

Interpreters are to be paid for the service rendered. As in any professional organization, many hours of volunteer service is given by the members. However, since interpreters often take off from work, need to arrange for baby-

sitting services, travel great distances to provide the service and are saddled with lunch and parking fees, etc., just reimbursement must be considered.

Since the RID is often asked to quote fees for interpreters for deaf people, the following Suggested Fee Schedule was developed by the RID Executive Board and was approved by a vote of RID members. It should be noted that fees vary according to type of assignment and interpreter's certification. The fees outlined below are suggestions; the RID and member interpreters recognize that each interpreting situation is different and that adjustments in fees may be made.

SUGGESTED FEE SCHEDULE
(Revised 1973)

Interpreters Holding R.I.D. Certification:

CSC: Comprehensive Skills Certificate
RSC: Reverse Skills Certificate
ETC: Expressive Translating Certificate
EIC: Expressive Interpreting Certificate

Interpreters Not Holding R.I.D. Certification:

NCI: Non Certified Interpreter

1. OCCASIONAL Interpreting Assignments

   a. CSC and RSC: Minimum three hours per "call".
      ETC AND EIC: Minimum two hours per "call".

b. CSC and RSC: $11.25 to $15.00 per hour, according to experience/qualifications.
ETC and/or EIC: $10.00 per hour.
NCI: Minimum of $5.00 to $7.50 per hour.

c. CSC and RSC: Maximum $75.00 for "full day" assignments.
ETC and/or EIC: Maximum $50.00 for "full day" assignments.
No more than six hours actual interpreting time.

2. CONFERENCES of Two or More Days Duration

a. CSC and RSC: $75.00 per day; $375.00 per 5-day week.
ETC and EIC: $50.00 per day; $250.00 per 5-day week.

PLUS

b. Travel expenses and per diem at prevailing agency rate.

3. CONTRACT Interpreting

a. 15 hours or less per week on regular assignment basis.

b. CSC and RSC: $11.75 to $15.00 per hour according to experience/qualifications.
ETC and/or EIC: $10.00 per hour.

4. FULL TIME Interpreting

   a. 4 hours daily or twenty hours weekly per 5-day week.

   b. CSC and RSC: $260.00 per week.
      ETC AND EIC: $200.00 per week.

      PLUS

   c. Fringe benefits or salary commensurate to that of other professional staff within the agency.

HOW ARE CERTIFIED RID MEMBERS IDENTIFIED?

The National RID Office issues a blue membership card which identifies that the member is in good standing for the current fiscal year. An additional card is issued which shows the certification that a member holds.

In identifying certified members, both cards should be shown by the member upon request.

HOW MAY INTERPRETERS BE CONTACTED?

Interpreting services may be obtained in the following ways by:

- contacting your local RID Chapter office given in this book (if identified).
- contacting your RID Chapter President.
- contacting one of the interpreters listed in this book directly.
- contacting the National RID Office.

- Contacting a referral agency serving the deaf community. (Within the past 2 years a number of referral agencies have been established.)

HOW MAY MORE INFORMATION ON INTERPRETING SERVICES BE OBTAINED?

The local RID Chapter is the first contact for additional information. If the local chapter cannot fulfill the needs, then contact the National RID Office.

CERTIFIED INTERPRETERS

The following pages of this Directory only includes those current members who are certified by the National RID Certification Board. There are other RID members not yet certified living in the region. Their names are only published in the general RID Directory.

R.I.D. CHAPTERS

There may be states listed that have an official chapter but no certified members at this time, as well as states listed who have certified members but no official chapter at this time.

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President Elect
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Treasurer
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ILLINOIS

Illinois State Interpreter Law

Scope: Court must appoint interpreter for deaf party or witness in "any legal proceeding of any nature."

Payment: By county in which proceeding is held.

Qualifications: Interpreter must be "qualified".

Statutes: Illinois Annotated Statutes
38 §165-11 thru 13; 51 §47;
51 §48.01

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INDIANA CHAPTER

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Marvin Marshall
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INDIANA

Indiana State Interpreter Law

Scope: Deaf party or witness to civil, criminal, or administrative proceeding has right to interpreter.

Payment: Determined by appointing authority except that an acquitted criminal defendant shall not be required to pay.

Qualifications: Appointing authority may inquire into qualifications of interpreter.

Statutes: Indiana Statutes Annotated §3-1-23-21; §4-22-1-22.5; §34-1-14-3; §35-1-30-4; §35-1-8-2.

Indiana Rules of Trial Proceeding 43 (F).

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Michigan State Interpreter Law

Scope: Court must appoint interpreter for deaf witness or defendant in criminal proceeding.

Payment: By county in which proceeding is held.

Qualifications: Interpreter must be "qualified".

Statutes: § 775.19 and 775.19a.

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MINNESOTA

Minnesota State Interpreter Law

Scope: Interpreter must be appointed for deaf party or witness in:

1. Mental commitment proceedings and mental health examination connected with the proceedings
2. Civil action
3. Criminal action
4. Administrative agency proceedings
5. Proceedings preliminary to any action in which deaf person may be confined or penally sanctioned, including coroner's inquest and grand jury proceeding
6. Pre-trial interrogation of deaf criminal defendant

Payment: By appointing authority.

Qualifications: Interpreter must be readily able to communicate with and translate statements of and translate proceedings to the deaf person.

Statutes: Minnesota Statutes Annotated §253.053; 546.42; 546.43; 611.30 thru 611.34.

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OHIO

Ohio State Interpreter Law

Scope: Court must appoint interpreter for deaf party or witness to civil or criminal legal proceeding.

Payment: By losing party in civil case.
By county treasury in criminal case and grand jury proceeding.

Qualifications: Interpreter must be "qualified".

Statutes: Baldwin's Ohio Revised Code Annotated §1903.19; 2301.12; 2301.14; 2311.14; 2335.05 thru 2335.09.

OHIO

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CSC
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Dayton, OH 45432
(H) (513) 429-1203
(W) (513) 274-8047

BATESON, Winnie E.
CSC - LSC
3604 Church Street
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(W) (513) 561-6678

BERGQUIST, Karlton
RSC
3250 Chaucer Drive
Columbus, OH 43221
(H) (614) 457-5474

CAMPBELL, Mary Caroline
CSC
401 Monroe Avenue
Cuyahoga Falls, OH 44221
(H) (216) 929-2467

CHAMBERS, Donna
ETC - EIC
4472 Sandy Lane
Columbus, OH 43224
(H) (614) 268-4871

DAULTON, Frances E.
EIC
4339 Eileen Drive
Cincinnati, OH 45209
(H) (513) 531-5647

DAULTON, Jody Lee
ETC - EIC
4757 Almont Drive
Columbus, Ohio 43229
(H) (614) 888-3955

DOBECKI, Janet Sue
CSC - LSC
922-L Chatham Lane
Columbus, OH 43221
(H) (614) 451-5964
(W) (614) 221-6743 X241

DUNING, LeRoy
RSC
97 E. Orchard Avenue
Lebanon, OH 45036

ENGLE, Margaret Ann
ETC - EIC
RR#1 - Box 100-C
Williamsburg, OH 45176
(W) (513) 921-6236

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CSC
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(H) (614) 846-5785

GOODYEAR, Connie J.
CSC
3325 E. 7th Avenue #23
Columbus, OH 43219
(H) (614) 231-0118
(W) (614) 221-6743

OHIO (Cont.)

HERING, Betty Marie
ETC
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Branch Hill, OH 45108
(H) (513) 683-4780

HOLT, Richard
CSC
125 Chestnut
Leetonia, OH 44431
(H) (216) 427-6601
(W) (216) 242-7355

HUTCHISON, Freeda Mae
CSC
6030 Layne Hills Court
Englewood, OH 45322
(H) (513) 835-5073

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CSC
257 W. Pacemont
Columbus, OH 43202
(H) (614) 262-3586
(W) (614) 221-6743

JAHN, Darlene Z.
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775 Timberman Road
Columbus, OH 43212
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(W) (614) 221-6743 X341

JONES, Edith Ann
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3572 Glengary Lane
Cincinnati, OH 45236
(H) (513) 791-0889

KENNEDY, Everett J.
RSC
330 Acton Road
Columbus, OH 43214

LANKENAU, Robert O.
RSC
1575 Redwood Avenue
Akron, OH 44301
(H) (216) 773-1535

LATIMER, Nancy Lynn
ETC - EIC
349 Elliott Avenue
Cincinnati, OH 45215
(H) (513) 948-1682

LEBER, Donald E. (Rev.)
EIC
360 Morse Road
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(W) (614) 885-3362

MANCINI, Linda
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1561 Pinecone, NW
North Canton, OH 44720

MEDLIN, Ben H.
RSC
1 Earhart Place
Kettering, OH 45420
(H) (513) 253-8787

OHIO (Cont.)

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RSC
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MILLER, Doris J.
CSC
416 Lewiston Road
Dayton, OH 45429
(H) (513) 293-9716

MOORE, Marguerite
CSC
650 Farrington Drive
Worthington, OH 43085
(H) (614) 885-8431

MORGAN, Loren M.
CSC - LSC
419 Probasca City
Cincinnati, OH 45220
(H) (513) 961-4193
(W) (513) 253-2106

MYERS, Barbara
CSC
2444 Olentangy Drive
Akron, OH 44313
(H) (214) 867-4123

NOBLE, Ginger
CSC
199 S. Balch St.
Akron, OH 44302

PARKER, Evelyn V.
CSC
2707 Rockledge Trail
Dayton, OH 45430
(H) (513) 426-4938

PLASTER, William K.
EIC
220 William H. Taft Rd
Cincinnati, OH 45219
(W) (513) 751-1066

PROK, Myron (Rev.)
CSC
2085 Wascana Avenue
Lakewood, OH 44107
(H) (216) 228-0776

PROK, Shirley
CSC
2085 Wascana Avenue
Lakewood, OH 44107
(H) (216) 228-0776
(W) (216) 252-1222

REISING, Darlyne J.
ETC - EIC
14111 Triskett
Cleveland, OH 44111

ROSE, Susan
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108B E. Woodruff Ave.
Columbus, OH 43201
(H) (614) 291-9073

OHIO (Cont.)

SCHERER, Margo J.
CSC
1055-A Merrimar Circle
N. Columbus, OH 43220
(H) (614) 457-9421
(W) (614) 221-6743 X241

SCHNECK, Jim
CSC
2245 Lincoln Way, W
Massillon, OH 44646
(H) (216) 837-9724
(W) (same as above)

SEDERWALL, John K. (Rev.)
CSC - LSC
131 Morningside Drive
Akron, OH 44303
(H) (216) 376-1688
(W) (216) 836-5530

SHAFFER, Shirley M.
CSC
5805 Roche Drive #B
Columbus, OH 43229
(H) (614) 733-3220
(W) (614) 923-0434

SLAGLE, Joann C.
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1561 Lexdale Court
Reynoldsburg, OH 43068
(H) (614) 864-7590
(W) (614) 294-5571

SMITH, Bruce Alan
CSC
3704 W. Siebenthaler
Dayton, OH 45406
(H) (513) 275-4127
(W) (513) 276-2107

TURNER, Karen Dixon
CSC - LSC
The University of Akron
Dept of Speech Pathology
and Audiology
Akron, OH 44325
(W) (216) 375-7883

VEGAS, Dorothy Gene
RSC
910 Nome Avenue
Akron, OH 44320
(H) (216) 836-3612

WEBER, Sue Ellen
RSC
1304 7th Street
Ironton, OH 45638

WISCONSIN CHAPTER

Wisconsin Registry of Interpreters for the Deaf

President
Michael Cinatl
1414 E. Warnimont
Milwaukee, Wisconsin 53207
Hm (414) 282-0834

First Vice President
David Watson
Route 1
Winneconne, Wisconsin 54986
Hm (414) 582-4412

Second Vice President
Diane Currie
2805 Stein Street #204
Eau Claire, Wisconsin 54701
Wk (714) 834-0058

Secretary
Margaret James
230 Lazy Acre Road
Wausau, Wisconsin 54401

Treasurer
Vincent Abaravich
3051 S. 50th St.
Milwaukee, Wisconsin 53219
Hm (414) 543-8521 TTY/Voice

WISCONSIN

Wisconsin State Interpreter Law

Scope: Interpreter must be appointed:

1. For deaf criminal defendant at trial or examination
2. For deaf party at administrative agency proceeding

Payment: By appointing authority if deaf person is unable to pay.

Qualifications: Interpreter must be "competent".

Statutes: Wisconsin Statutes Annotated §59.77; 885.37; 906.04; 879.41; 885.05.

WISCONSIN

ANDREWS, Chris Ann
ETC - EIC
8307 W. Oklahoma Avenue
Milwaukee, WI 53219
(H) (414) 543-2429
(W) (414) 544-8735

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Monona, WI 53716
(H) (608) 222-5953

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Beloit College Box 2261
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(H) (414) 354-4975
(W) (608) 365-3391 X484

BRASEL, Kenneth E.
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3140 S. Shore Drive
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(W) (414) 728-6477

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CONWAY, P. Miller
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156 Ethel Street
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(W) (608) 222-1255

GAETER, Linda Cheryl
P.P.
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Osceola, WI 54020
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(W) (608) 849-4372

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ROEDER, Marilyn Jean
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(H) (715) 842-8450
(W) (715) 675-3331

SCOTT, Judith Grace
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SHIPMAN, Norma C.
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ZOLA, Evelyn
RSC
2877 N. 50th Street
Milwaukee, WI 53210

HACKENSACK NEIGHBORHOOD CENTER,
BERGEN COUNTY COMMUNITY ACTION PROGRAM, INC.,
Hackensack, N.J.

Representative DONALD EDWARDS,
House Judiciary Committee,
House Annex 1,
Washington, D.C.

DEAR MR. EDWARDS: Thank you for taking the time to send me a letter regarding Hearings for Court Interpreters.

I am pleased to know that through my information Mrs. Paulette Harary of New York was able to attend and make a presentation to the Panel.

Unfortunately, perhaps due to mail problems, the letter you sent was received too late to warrant my making the trip to Washington.

I am enclosing my statement concerning the Court Interpreters in the State of New Jersey, as I see it.

Thanking you for your consideration. If it is at all possible I would greatly appreciate receiving copies of the transcripts of the Hearing regarding Bilingual Court Interpreters.

Sincerely,

VIRGINIA O'BRIEN,
Translator Interpreter.

VOB: Enclosure.

STATEMENT TO HOUSE JUDICIARY

August 21, 1978.

In one Federal case with several co-defendants I noticed a team of Court Steongraphers who were relieved every half hour. This should be made available to Court Interpreters involved in complex multiple co-defendant trials.

The knowledge of the "muffling" device available in Utah would also be of great benefit in Courts throughout the United States as it would enable an Interpreter to give accurate "Consecutive Interpretation" without distracting Counsel or the Court.

In closing I will state that the role of an "Interpreter" within the State of New Jersey is only now becoming recognized as "specialized" in some areas.

Many who practice actively lack specialized training in Court Room etiquette; legal terminology in BOTH languages; understanding of the "Mechanics" of Interpreting in the Court of Law.

The Senate passed Court Interpreters Bilingual Bill and the House Bill 10228 with its provisions for testing, training and certification of all who interpret can only serve to eliminate those who are unwilling to polish up on their skills or add to them (myself included.)

I hope that the House Bill 10228 does pass and will eventually provide for qualified Interpreters to all who need their services and expertise.

Submitted August 21, 1978. Virginia O'Brien, Interpreter, Full Time; Bergen County C.A.P. Spanish Bureau, Free-lance Interpreter Part Time.

STATEMENT CONCERNING INTERPRETERS' (BILINGUAL) SITUATION IN THE STATE OF NEW JERSEY BY VIRGINIA O'BRIEN

During the past three years I have actively participated in Federal District Superior and Municipal Courts throughout the State of New Jersey.

There have been many situations where it would have been far more realistic to have provided an Interpreter for each of the parties, as well as an Interpreter solely for the colloquy between Attorneys and Judges.

In one Federal case it was sorely evident that the United States Attorneys were very wary of the Interpreter who had been sent to replace another Interpreter. It is in instances such as these, specifically, that a qualified Interpreter would be better able to function in his/her role with credentials, i.e., Identification Card, Name Tag, etc., perhaps provided by the Administrative Office of the Courts, rather than the most likely, Voir Dire and subsequent doubts of opposing parties. It would be most beneficial to be recognized as an—Interperter—who is, in fact, Impartial, recognized as such, and simply be allowed to do one's job.

My experience has also shown the need for recognition, by the Judges and Lawyers, of the fact that Interpreters also need the opportunity to rest or be relieved. This is of tantamount importance in those cases where a mistrial could result from error (actual or implied).

NEW JERSEY DEPARTMENT OF CIVIL SERVICE
ARNOLD CONSTABLE BUILDING
209 EAST STATE STREET
TRENTON, N.J. 08625

NOTIFICATION OF ELIGIBILITY

TRENTON N.J.

FIRST-CLASS MAIL
U.S. POSTAGE PAID
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CONGRATULATIONS! You have just passed a New Jersey Civil Service examination. Our standards are high, so you can be justly proud of your achievement. After previous lists, if any, are used and those ahead of you on this list are considered for appointment, you will be notified where and when to appear for an employment interview. The list you are on stays in effect until the date shown below.

If you wish a copy of our brochure showing what happens after your name is placed on an eligible list, write to us requesting our "Congratulations Brochure."

Within 20 days from date of this notice you may inspect your test papers from 9:00 to 12:00 and 1:30 to 4:00 Monday thru Friday, legal holidays excepted, at Civil Service office - Arnold Constable Building, Front & Montgomery Streets, Trenton, N.J. Only one inspection is permitted. Bring this card.

INTERPRETER BI IN SP & ENG
TITLE

C3009	Bergen Co.
SYMBOL	JURISDICTION
1/25/78	2/15/78
EXAM DATE	NOTICE DATE

1	88.000	2/22/81
RANK	FINAL AVERAGE	LIST EXPIRES

CHIEF EXAMINER AND SECRETARY
NEW JERSEY DEPARTMENT OF CIVIL SERVICE

CS-136•REV. 11/73

OBRIEN VIRGINIA M
120 HACKENSACK STREET
EAST RUTHERFORD N J
07073

NEW JERSEY DEPARTMENT OF CIVIL SERVICE
ARNOLD CONSTABLE BUILDING
209 EAST STATE STREET
TRENTON, N.J. 08625

NOTIFICATION OF ELIGIBILITY

CONGRATULATIONS! You have just passed a New Jersey Civil Service examination. Our standards are high, so you can be justly proud of your achievement. After previous lists, if any, are used and those ahead of you on this list are considered for appointment, you will be notified where and when to appear for an employment interview. The list you are on stays in effect until the date shown below.

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INTERPRETER BI IN SP + ENG
TITLE

C2427 MERCER CO-STATE
SYMBOL JURISDICTION

7/20/77 8/24/77
EXAM DATE NOTICE DATE

5 ACNVET 93.500 8/31/80
RANK FINAL AVERAGE LIST EXPIRES

CHIEF EXAMINER AND SECRETARY
NEW JERSEY DEPARTMENT OF CIVIL SERVICE

CS-1369REV. 11/73

TRENTON N.J.

FIRST-CLASS MAIL
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OBRIEN VIRGINIA
120 HACKENSACK ST
E RUTHERFORD N J
07073

State of New Jersey
Office of the Public Defender

Virginia O'Brien
Interpreter

Off. Public Defender

I.D. #
53-382

This certifies that the above individual is attached to this office.

DATE ISSUED
1-12-78

Stanley C. VanNess
Public Defender

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., August 15, 1978.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: I regret that I was unable to appear before your Subcommittee to urge favorable and expeditious action on H.R. 10228, the House counterpart of S. 1315, the Bilingual, Hearing and Speech Impaired Interpreters Act. As author of S. 819, the Interpreters for the Hearing Impaired Act, as well as cosponsor of S. 1315 and its predecessor S. 565, I appreciate the opportunity at this time to communicate to the Subcommittee my strong support for this legislation.

In recent years, Congress has considered a variety of proposals to insure equal access for all Americans to our federal courts. Proposals dealing with increasing the number of federal district and appellate judges, standing to sue, attorneys fees in federal civil rights cases and suits against federal, local and state governments for constitutional violations by their employees, have been among the "access" issues to be debated in this and earlier Congresses. These are important proposals. They deserve our full and careful consideration. But, other less publicized "access" bills deserve similar attention. One of these is the Bilingual, Hearing and Speech Impaired Interpreters Act. Certainly, this important proposal must be an integral component of our legislative "access" agenda.

Today, the phrase "equal access to justice" has little meaning for millions of Americans. Unable to speak or understand English, or suffering from a hearing or speech impairment, these persons find themselves incapable of participating effectively in federal court proceedings. To these individuals, our existing statutory and constitutional rights, as well as those additional guarantees set forth in pending proposals, are of little comfort. In the absence of statutory assurances that they will be provided qualified interpreters, they are effectively denied "access to justice". To them, access to qualified interpreters is "access to justice". It is to these individuals that H.R. 10228/S. 1315 is addressed.

H.R. 10228 is an important step in our effort to provide effective interpretive services in our federal courts. At the heart of this bill is the recognition that Rules 28 (f) and 43 of the Federal Civil and Criminal Rules of Procedure respectively, have been inadequate in insuring such services in the past. Rather than continuing the discretionary appointment provisions found in the Rules, H.R. 10228 would require the appointment of interpreters in civil and criminal cases initiated by the United States where it is determined that a person involved in the proceedings speaks a language other than English or suffers from a hearing or speech impairment which would inhibit his or her comprehension of the proceedings. Not only would this provision broaden the availability of interpreters but—unlike the present rules—it would also provide uniform standards for such appointments.

Equally significant, the proposal would go far toward insuring the availability of qualified, competent interpreters. First, the bill places on the shoulders of the Director of the Administrative Office of the United States Courts the responsibility to prescribe, determine and certify the qualifications of those seeking to be certified as interpreters in the federal courts. Furthermore, each district court is directed to maintain a compliation of certified interpreters. Both of these changes represent distinct improvements over the existing rules.

As you know, H.R. 10228 is a consolidation of my bill, S. 819, the Interpreters for the Hearing Impaired Act, and the original version of S. 1315. I originally introduced S. 819 because of my concern that S. 565, the predecessor to S. 1315,

did not adequately protect the interests of the hearing-impaired, as opposed to non-English speakers who did not suffer physical impediments to their hearing. For example, S. 565 would have limited the appointment of interpreters to individuals who did not speak and understand the English language. Thus the bill would have excluded from its coverage a totally deaf person who could speak English, but could not understand it. By specifically providing that it will cover hearing and speech-impaired individuals, S. 1315 clearly brings these physically handicapped persons within the purview of the bill. I am pleased that the bill now before the Subcommittee, while not incorporating all of the key provisions of S. 819, includes this important language, as well as others.

I am convinced that the enactment of S. 1315/H.R. 10228 will provide for meaningful access to our federal courts for millions of Americans. In addition, this proposal will hopefully serve as a model for similar laws in the states. In this regard, I am pleased that my own State of Maryland has been in the forefront of those jurisdictions which have enacted legislation for the appointment of interpreters for hearing-impaired individuals in state court proceedings.

Thank you once again for giving me the opportunity to share with the Subcommittee my views on S. 1315/H.R. 10228.

With best wishes,

Sincerely,

CHARLES MCC. MATHIAS, JR.,
U.S. Senator.

THE ASSEMBLY, STATE OF NEW YORK,
Albany, August 11, 1978.

HON. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights,
U.S. House, House Annex No. 1,
Washington, D.C.

DEAR CONGRESSMAN EDWARDS: I am writing to you as Chairman of the New York State Assembly Committee on Judiciary to express my support for Congressman Fred Richmond's bill, H.R. 10228, entitled the "Bilingual, Hearing, and Speech-Impaired Court Interpreter's Act".

This bill represents a necessary attempt to expand the protections of due process of law to some 40 million Americans who, because of language or hearing handicaps, may not otherwise enjoy a fair trial.

In New York State, Article XII of the Judiciary Law, whose various sections date in some cases to the latter decades of the nineteenth century, fills the needs of these particular litigants. New York State, as is overwhelmingly evidenced in Mr. Richmond's own district, is richly endowed with peoples of many origins with a high incidence of the use of a language other than English as the primary tongue. Protection from injustice born of a lack of understanding of court proceedings is a fixed obligation of our State's constitutional law. It is an obligation that should be shouldered by our federal judiciary.

One of the Richmond bill's vital proposals is the required certification of interpreters. As testimony before you has revealed, the means to provide for such certification do exist. Clearly, the use of interpreters in a court of law without control over their selection would be unacceptable. In New York State, interpreters are officials of the county courts sworn to their duty by constitutional oath and are in this way overseen in the performance of their offices.

I urge you to give your fullest consideration to this bill and call for its speedy adoption into law. By so doing, you would do great service to all language and hearing handicapped litigants in our federal courts to the betterment of all Americans and our system of justice.

Yours truly,

ARTHUR J. COOPERMAN, *Chairman.*

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., August 21, 1978.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, House Annex Building, Washington, D.C.

DEAR CHAIRMAN EDWARDS: The U.S. Commission on Civil Rights is pleased to have this opportunity to comment on H.R. 10228, a companion bill to S. 1315, which passed the Senate earlier in the 95th Congress. If enacted, H.R. 10228, entitled the "Bilingual, Hearing and Speech Impaired Court Interpreter Act" will extend the underlying principles of our judicial system to those individuals who are not fluent in English, and will provide non-English speaking persons the opportunity to fully participate in our federal court proceedings. In addition, this bill represents a positive response to the problems the physically handicapped have encountered in the courts.

The Commission on Civil Rights has been concerned with the need for bilingualism in education, legal proceedings, and more recently in voting. Commission reports on these subjects include the six volume Mexican American Education Studies series,[1] *Mexican Americans and the Administration of Justice in the Southwest* (1970), *A Better Chance to Learn: Bilingual Bicultural Education* (1975) and *Puerto Ricans in the Continental United States: An Uncertain Future* (1976). Several of the State Advisory Committees to the Commission have looked at various aspects of the issue including the May 1974 report of our Illinois Committee "Bilingual Bicultural Education: A Privilege or A Right?" and the 1976 report of the California State Advisory Committee, "Administration of Bilingual Programs, Si o No?"

Most numerous among those who do not speak English in the United States are Hispanic Americans. In its 1970 Supplemcntary Report on Persons of Spanish Ancestry, the Bureau of the Census reported 8,000,000 persons whose mother tongue is Spanish. Many children of Hispanic parents attend schools where the language of instruction is English. In February, 1974, this Commission released a study on the education of Mexican Americans in the five Southwestern States which indicates that the ability of many of these children to function in English remains limited.[2]

Other groups are similarly disadvantaged when dealing with English speakind administrators of justicc. During our Southwest Indian Hearings we learneg that many Native Americans in the Southwest have great difficulty in coping with a law enforcement system which operates primarily in English. Similar languagc problems were uncovercd when members of the Chinese, Japanese, Korean, Filipino and Scmoan communities testified before the California State Advisory Committee to the U.S. Commission on Civil Rights in 1973.[3] These Americans arc not being treated fairly before thc law, for they can understand neither the law nor its process in a justice system which functions almost exclusively in English.

H.R. 10228 establishes new guidelines for obtaining interpreters in our Federal courts while maintaining a nceded flexibility in promulgating those guidelines. The bill has the following salutary provisions:

It acknowledges the basic right of translation in civil and criminal cases, but permits the cxercise of judicial discretion in ordering complcte, simultaneous translation in certain civil and criminal cases.

Requires that a waiver of interpretive aid be expressly made, and thus prevent a defendant's silence, or his/her attorney's failure to make timely objections from being construcd as a waiver. As proposed by H.R. 10228 waiver motions by a defendant must be approved by the presiding judicial officer, following consultation with counsel. These safeguards, fully reflected on the trial record for the purposes of appellate review, will eliminate needless litigation.

The bill makes provision for the apportionment of court interpreter costs in civil proccedings among the parties or allowed as costs in the litigation. This permits judicial flexibility in resolving the issue of who should bear the additonal costs in the myriad types of civil litigation likely to come before Federal courts,

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[1] *Ethnic Isolation of Mexican Americans in the Public Schools in The Southwest*, April 1971; *The Unfinished Education*, October 1971; *The Excluded Student*, May 1972; *Inecuality in School Financing: The Role of Law*, August 1972; *Teachers and Students*, March 1973; *Toward Quality Education for Mexican Americans*, February 1974.

[2] See also: *Lau* v. *Nichols* 349. 414 U.S. 563 (1974). 2,856 students of Chinese ancestry in the San Francisco public school system did not speak English, and only 1,000 of those children were receiving supplemental courses in English.

[3] Asian American & Pacific Peoples. A Case of Mistaken Identity—A report of the California Advisory Committee to the U.S. Commission on Civil Rights (Feb. 1975).

and to equitably resolve cases involving indigent persons and those able to afford the cost of an interpreter.

Yet, there are several distinguishing provisions of this bill which, in our view, make it a significant improvement over the Bilingual Courts bills introduced during the 93rd and 94th Congress. First, while all the aforementioned bills have proposed aid to individuals who could not fully comprehend court proceedings in English, H.R. 10228 extends the aid of interpreters to individuals who have hearing/speech impairments. We firmly believe that the same policy considerations that compel the aid of an interpreter for a non-English speaking litigant should also hold true for an individual who is physically handicapped with a hearing or speech impairment. Second, this bill would amend the Puerto Rican Federal Relations Act and add language permitting initial pleadings in the District Court of Puerto Rico to be in Spanish or English. All further proceedings would be conducted in English unless the court ordered them to be conducted in Spanish. Third, H.R. 10228 would amend Title 28 by adding § 1869a, which provides that a person may not be disqualified from jury service on any federal jury in the Commonwealth of Puerto Rico due to inability to speak, read, write and understand English if that person is able to speak, read, write and understand Spanish. That is, by enabling Spanish-speaking jurors who do not speak English to sit on cases where the proceedings are conducted in Spanish, juries in the Commonwealth of Puerto Rico will be more "representative" since the majority of the populace does not speak English. Present Federal law requires that proceedings in the Federal District Court in Puerto Rico be conducted only in English and, similarly that "only persons able to understand English may serve as jurors." Thus, present federal statutes not only require that all proceedings in Federal Court be conducted in a langugage which is foreign to over half the people in the judicial district, but also elminates half the population from possible service on juries in Federal court cases. This prevents a cross-section of the general population from serving on jury panels, a situation which runs counter to the policy of the Jury Selection ands Service Act of 1968 (P.L. 90–270) which states: "all litigants in Federal court entitled to trial by jury shall have the right to . . . juries selected at random from a fair cross-section of the community" (S101, 28 U.S.C. 1861).

While the Commission supports H.R. 10228, there are, nonetheless, areas of concern which we have with respect to the bill. First, it is not celar from the language of the bill whether interpreters are provided at the time of the arraignment in crlminal cases. In our view, failure to provide interpretive aid at the time of arraignment and thereafter raises serious constitutional questions, e.g. whether the defendant fully understands the nature and extent of the charges against him and knowingly waives any constitutional right to remain silent or to be represented by counsel. As the Commission on Civil Rights pointed out in the 1970 report *Mexican Americans and the Administration of Justice in the Southwest*:

"Many Mexican American defendants who have some knowledge of English lack sufficient proficiency to understand fully the nature of the charges or proceedings against them. These defendants cannot plead intelligently, advise their lawyers with respect to the facts, fully understand the testimony of witnesses against them, or otherwise adequately prepare or assist in their own defense.[4]"

In our view then, for an individual accused of a crime, who does not speak the language of the court, procedural and constitutional safeguards are reduced to mere trappings.

Indeed, the constitutional protections with respect to interpretive assistance may arguably extend to the time the Miranda warnings are given. Admittedly, there is little case law on the right of a defendant to an interpreter in a criminal case, but relevant cases seem to permit the right of an interpreter to defendants who cannot effectively communicate with counsel and who lack the financial resources to hire an interpreter.[5] While the thrust of the cited cases provides the policy underpinnings of this bill, it is nontheless unclear from the language of the bill as to when interpreters are required and will be provided.

Second, this bill does not require that any proceeding utilizing bilingual interpretation be recorded in addition to any stenographic transcript. Further, it is not clear whether H.R. 10228 authorizes the presiding judicial officer to order a recordir g at his/her discretion. The U.S. Commission on Civil Rights is cognizant

[4] "Mexican Americans and the Administration of Justice in the Southwest", A report of the U.S. Commission on Civil Rights (1970) at 69.

[5] *United States ex rel. Negron* v. *State of New York*, 310 F. Supp. 1304 (1970) aff'd 434 F. 2d 386 (1970); *U.S.* v. *Desist*, 384 F. 2d 889, aff'd 394 U.S. 244 (1968).

of the standards outlined in the bill for the certification of interpreters, but ineffective and/or erroneous translation is possible nonetheless. If that should occur, however rare it may be, the fact of the matter is that appellate review would be difficult, if not impossible, absent a record of the translation. Moreover, in the absence of recording, how can the accuracy of an interpreter be measured? Clearly, accuracy of translation is a wholly separate issue from the qualifications of interpreters.

The Commission does not take the position that electronic recording of testimony should be mandatory—admittedly it would not be necessary in many cases and thus unjustifiably expensive. It would seem preferable to expressly leave to the Judge's discretion those instances when recording is either (1) necessary or (2) when the recording can serve to verify portions of testimony. While cost and frivolous appeals are valid considerations for not including recordation in the bill's provisions, on balance, this Commission feels that granting this discretion to the bench and the importance of accuracy of translation outweighs these concerns. Conceivably at stake is the freedom of an individual, which is paramount to cost considerations and court convenience. At the very least, we would hope the hearing record on H.R. 10228 is clarified to reflect that recordings can be utilized if the court believes it is warranted. In addition, we urge amendment of H.R. 10228 to require presiding judicial officers to order recordings as a method of verifying the accuracy of interpreted testimony.

The Commission strongly supports H.R. 10228 as a progressive measure which will assure all Americans full access to our judicial system—despite whatever language, speech or hearing impairments individuals may have. Although there have been earlier bills concerning bilingual aid in the Federal court system, this is the first bill that has extended this type of significant aid to physically handicapped individuals. This reflects a growing awareness of American minorities who have been kept for so long outside the mainstream of American life. Again, the U.S. Commission on Civil Rights would like to thank you for the opportunity to submit this statement for the hearing record.

Sincerely,

WILLIAM T. WHITE, Jr.,
Acting Staff Director.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 2, 1978.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights,
House Committee on Judiciary,
Rayburn Building, Washington, D.C.

DEAR DON: During today's Subcommittee hearings on H.R. 10288, the Bilingual, Hearing and Speech Impaired Court Interpreter's Act, the testimony of one witness may have confused some important issues pertaining to certification of interpreters.

Ms. Harary did not clearly indicate that her association of court interpreters is exclusively a bilingual interpreter organization, and that it neither represents nor maintains contacts with manual or oral interpreters for the deaf. In addition, Ms. Harary's testimony did not clearly state whether her bilingual interpreter's association was a local, state or national organization.

The Registry of Interpreters for the Deaf has 2200 holders of Comprehensive Skills Certificates nationwide, all of whom are capable of courtroom interpretation. However, bilingual court interpreters do not have similar standards for certifying interpreters nor a nationwide court interpreter association with state chapters certifying courtroom interpreters.

I consider it essential that the Subcommittee retain provisions in the bill requiring the judicial officer to consult with the local chapter of interpreters for the deaf to ensure that a skilled, certified interpreter is available in the courtroom. I strongly urge my colleagues on the Subcommittee to retain this established standard for selecting qualified interpreters for the speech and hearing impaired.

All good wishes.

Yours sincerely,

FRED RICHMOND.

REGISTRY OF INTERPRETERS FOR THE DEAF, INC.,
Washington, D.C., August 4, 1978.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights,
House Committee on Judiciary, Rayburn Building,
Washington, D.C.

DEAR REPRESENTATIVE EDWARDS: I have been given a copy of the testimony of Paulette Harary of 124 Tilton Drive, Freehold, New Jersey, that was given to the Subcommittee on Civil and Constitutional Rights on H.R. 10228 on Wednesday, August 2, 1978. I feel compelled to address statements made in her testimony and in the questions and answers that followed in order to clarify what I perceive could confuse statements made by me as an interpreter for hearing-impaired individuals in testimony given by me on August 2, 1978.

GENERAL STATEMENTS

Paulette Harary is a foreign language interpreter and not an interpreter for the hearing-impaired. Sign language is classified as a language, in fact the 3rd most used foreign language in the United States. However, it is a language using a different mobility than spoken foreign languages. Very Specialized skills (*not* required of the spoken foreign language interpreter) must be had by an individual serving the function for hearing-impaired as an interpreter of American Sign Language or translator of Signed English. Unless a foreign language interpreter has acquired sign language skills this individual cannot speak on behalf of the interpreters for the hearing-impaired.

Paulette Harary has made sweeping statements about interpreters which could be interpreted to include the interpreters for hearing-impaired individuals. However, it must be noted that the problems that hearing-impaired individuals and the interpreters for the hearing-impaired individuals face are based on linguistic limitations due to a hearing defect. These problems are far more complex than those of translating from one spoken language to another for a client who has basic linguistic competency.

The Registry of Interpreters for the Deaf, Inc. has found it necessary to develop a Certification Program for the Legal Interpreter in order to objectively insure that the individual prosesses the necessary interpreting skills. The Certification Program is a way the interpreters of the hearing-impaired have of upgrading themselves in order to be of service to both the hearing-impaired and hearing clients.

The Registry of Interpreters for the Deaf, Inc. does not choose to provide testimony of the foreign language interpreters since we are not familiar with the problems they face and would not want to make erroneous statements regarding their needs.

TESTIMONY PRESENTED

TESTIMONY OF PAULETTE HARARY

P. 1—Interpretive services can be provided for the non-English speaking defendant and the deaf mute before trial courts.

The term "deaf-mute" is never used by any interpreter for hearing-impaired individuals. It is insulting as well as scientifically incorrect. Hearing-impaired individuals strongly dislike the term and it is not used in the profession. Such a statement, on the part of Ms. Harary indicates the lack of knowledge or even awareness, in the field of deafness.

P. 2—Examination and certification of court interpreters. Grandfather clause awarded to those with successful performance.

The Registry of Interpreters for the Deaf, Inc. would never consider a grandfather clause as a vehicle to certify a court room interpreter for hearing-impaired individuals since this provides no objective way of truly assessing an individuals skills. We feel that an objective examination and certification is necessary and must be done under the supervision of a National Organization to insure consistency in performance nationwide.

P. 3—All too often because qualifying examination or certification does not exist significant delays attend the proceedings.

The Registry of Interpreters for the Deaf, Inc. has a general certification process that has been in existence since 1972 and the Legal Certification process since 1975. As interpreters are certified and present their credentials on demand there is no significant delay to the consumers, be they hearing or hearing-impaired.

P. 4—That is necessary to construct a test instrument that will measure proficiency of language skills.

The Registry of Interpreters for the Deaf, Inc. has constructed a test instrument to objectively measure the skill of the interpreter for the hearing-impaired individuals. For detailed information, kindly refer to my original testimony, pp. 4, 5, 6.

P. 5, 6, 7—Role of interpreter, professional development ongoing supervision.

The Registry of Interpreters for the Deaf, Inc. has built all of this into its Code of Ethics and Certification. (IF. appendices C—pg. 2, 3, 4, 5, of original testimony).

QUESTIONS AND ANSWERS RELATED TO MS. HARARY'S TESTIMONY

P. 64—AME 1141–1145.

In reference to training for hearing-impaired interpreters there are now 28 programs where interpreters can go to get training from a non-degree level to a bachelors. Seventeen states now have some official and formal type of program to train individuals to meet the needs of the hearing-impaired, either with sign language or oral interpreting. The Registry of Interpreters for the Deaf, Inc. has proposed Principles, Guidelines and Standard for the Accreditation of Interpreters Training Programs which I have enclosed.

P. 66 and 67—AME 1187–1199.

With the Registry of Interpreters for the Deaf, Inc. certification for the interpreters for the hearing-impaired individuals competence of the interpreter is immediately determined by the certification held, thus not placing the consumers at a disadvantage. The evaluation process does eliminate unqualified interpreters which is to the benefit of the consumers.

P. 68—AME 1220.

The Registry of Interpreters for the Deaf, Inc. already has a National Certification Program for those interpreters who wish to function in the courts and has issued certificates to those interpreters who have met minimum standards, therefore, it would not be a cost effective measure to have another agency duplicate for interpreters for the hearing impaired what is already in existence.

P. 68 and 69—AME 1227–1235.

I do not agree with the statement that State Agencies in the Case of the interpreters for the hearing-impaired individuals are not qualified to deal with certification at this time. It is appalling to see how little awareness there is for the needs of the handicapped in general. To saddle an inexperienced agency with a certification process that is foreign to them, would perpetuate the injustice that the hearing-impaired are struggling to rectify in #R10228.

In the case of certification of oral and sign language interpreters for hearing-impaired understands, there is no certification expense to any level of government since the Registry of Interpreters for the Deaf, Inc. does this as a matter of its professional commitment to the hearing-impaired community. The certification program is not bureaucratic, but rather democratic in nature since the hearing-impaired consumers and interpreters sit on the evaluation panels that assess the skills of a candidate for certification.

The Registry of Interpreters for the Deaf, Inc. is not in the business of limiting the number of certified interpreters but in business to assess the skills of a seasoned or neophyte interpreter so that the consumers receive the best interpreting services possible. The need for certified interpreters continues to grow as hearing-impaired individuals expand their involvement in society.

P. 69—AME 1242–1249.

A Civil Service evaluation procedure for interpreters for hearing-impaired individuals would be a costly system to set up since audio and film production would be necessary to develop objective evaluations. The Registry of Interpreters for the Deaf, Inc. has a certification process that has been developed by the National office and thus maintains a National standard.

P. 70—AME 1268–1270.

Congress would not have to be involved as the Registry of Interpreters for the Deaf, Inc. accepts the responsibility to supply oral and sign language interpreters for hearing-impaired individuals in every state.

P. 71—AME 1271–1282.

In regard to endorsements the Board of the Registry of Interpreters for the Deaf, Inc. feels that an objective evaluation by a group of individuals is far superior to any subjective endorsement.

P. 73—AME 1313–1318.

In all due respect to the judiciary, one who is not familiar with the problems of deafness cannot often, even tell if the interpretation is correct by just the response. That is why an objective evaluation is necessary to assess the skills before the interpreter for a hearing-impaired individual begins an assignment.

I strongly encourage the Subcommittee to retain provisions in the bill requiring the judicial offices to consult with the local chapters of the Registry of Interpreters for the Deaf, Inc. to insure that a skilled certified interpreter for hearing-impaired individuals is available in the courtroom.

Furthermore, the guarentee of justice in the judical process at the federal level and the retention of the established standards for selecting qualified interpreters for hearing-impaired individuals through the certification process established by the Registry of Interpreters for the Deaf, Inc. is essential to insuring nationwide consistency.

Again, my sincerest thanks for permitting me to provide input to the Subcommittee on Civil and Constitutional Rights.

Sincerely yours,

CARL J. KIRCHNER,
Immediate Past President
of the Registry of Interpreters for the Deaf, Inc.

STATEMENT OF MICHAEL A. CHATOFF

* * * [O]ur final goal is not simply to reduce caseloads or merely make our courts run more smoothly. Our goal is, and must be, to provide access to justice to all our people. Judicial reform—if it is to deserve our support—must preserve the courts, particularly the federal judiciary, as the forum where fundamental rights will be protected and the promise of equal justice under the law will be redeemed. Vice President Walter F. Mondale, 123 Congressional Record S 15022, 15023, September 15, 1977.

My name is Michael Chatoff. I am a member of the Bar of the State of New York and a senior editor for the West Publishing Company. I am totally deaf.

These comments are directed towards those provisions of the Bilingual, Hearing and Speech Impaired Court Interpreter Act that deal with the communications problems of hearing and speech impaired individuals (hereinafter, hearing impaired individuals). However, much that I will say pertains to non-English-speaking individuals as well. Indeed, one recent California case that I will cite deals with a non-English-speaking individual.

I think it is clear beyond any shadow of a doubt that a defendant in a criminal proceeding who cannot speak and/or understand spoken English because of a physical impairment is entitled to that assistance that will conform to due process of law; enable him to truly confront the witnesses against him; and permit him to confer with counsel. In other words, to participate in a meaningful way in his own defense. (*Terry* v. *State*, 21 Ala. App. 100, 102 So. 386 (1925); *United States ex rel. Negron* v. *State of New York*, 434 F. 2nd 386 (Second Circuit, 1970).)

Insofar as civil proceedings are concerned, the basic issues presented deal with fairness and access to the courts of this country, although I have little doubt that the principles mandating the appointment of an interpreter for a hearing impaired individual in criminal proceedings apply in civil proceedings as well. The Fifth Amendment prohibits the denial of "* * * property, without due process of law." In the final analysis, all civil proceedings deal with property.

It is axiomatic that one who cannot hear cannot understand verbal language. Disputes that cannot be settled out of court, must be resolved by resort to the judicial process. If an individual cannot resort to the judicial process, then he is being denied a right available to other people. If a hearing impaired individual cannot bring suit against a neighbor for the removal of an encroachment on his property solely because of the communications problems he will encounter in a court of law, then his denial of access to the courts will result in the loss of his property. If a hearing impaired individual cannot bring suit against the seller of a defective product, then he has suffered a diminution in his property, because he paid for a product that is partially or completely worthless.

The best estimate is that there are more than 13 million hearing impaired individuals in this country (*The Deaf Population in the United States*, Jerome D. Schein and Marcus T. Delk), although others have estimated the figure to be as high as 20 million. Few such individuals have ventured into Federal court, because, in their eyes, by failing to make provision for their communications needs, the Federal judicial structure has indicated to them that they are not wanted and they are very good at taking a hint.

Insofar as hearing impaired individuals are concerned, section 43(f) of the Federal Rules of Civil Procedure is, at best, a paper tiger. Although the Advisory Committee states that it is intended to provide *discretionary* authority to appoint an interpreter for a deaf person, by its terms, as implemented by Rule 604 of the Federal Rules of Evidence, it cannot possibly do so. Fewer than one half of all hearing impaired individuals rely upon sign language for communications purposes. Of course, there can be no suggestion of translation with regard to other forms of communication relied upon by hearing impaired individuals, e.g., residual hearing used in conjunction with lipreading; and transcription. Nor does one translate into sign language. Sign language is not a language but a mode of communication by which individuals who cannot hear spoken English converse in English by means of manual movement. One interprets into a mode of communication. It comes as no surprise to me that extensive research has not revealed a single citation dealing with the appointment of an interpreter for a hearing impaired individual under section 43(f).

Five years ago, Congress enacted the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq. Section 504 of that Act, 29 U.S.C. § 794, provides for the termination of funding to recipients of Federal financial assistance that discriminate against otherwise qualified handicapped individuals. Just as Title VI of the Civil Rights Act of 1964 established a procedure to enforce the preexisting right of individuals to be free from discrimination on the basis of race, color or national origin in programs and activities supported by Federal funds, so too, section 504 merely establishes a procedure to enforce the preexisting prohibition against discrimination against otherwise qualified handicapped individuals in programs and activities receiving Federal financial assistance. Actions brought under section 504 to date affected and actions that will be brought under section 504 in the future will affect the rights and livelihoods of millions of handicapped individuals. But how can a hearing impaired individual assert his rights under section 504 if he cannot communicate in court. Without enactment of this legislation, section 504 will represent nothing more than an empty promise to those 13 million individuals who suffer from hearing impairments.

To date, there have been three cases brought by hearing impaired individuals under section 504; *Barnes* v. *Converse College*, 436 F. Supp. 635 (SDSC, 1977); *Crawford* v. *University of North Carolina*, 440 F. Supp. 1047 (DNCC, 1977); and *Davis* v. *Southeastern Community College*, 574 Fed. 2d 1158 (Fourth Circuit, 1978). Two of those cases dealt with the need for interpreters in institutions of higher education in order to further the education and employment opportunities of the plaintiffs; the other case dealt with the right of a hearing impaired individual to practice the profession of her choice.

In the three cases, the National Center for Law and the Deaf, Legal Defense Fund, represented the plaintiffs and presumably supplied them with the necessary interpreter services, at the district court level, to enable them to participate in the prosecution of their cases. But the Legal Defense Fund has limited financial resources; even if it is in existence today, which is problematical, it can represent no more than two or three clients a year. Without the enactment of this legislation, those hearing impaired individuals not fortunate enough to retain the Legal Defense Fund would be denied access to the Federal court system, the establishment that has been "on the cutting edge of the fight for social justice in our nation." *ibid.* S. 15023.

In recent years, Congress has enacted several laws to protect the rights of consumers, e.g., the Consumer Product Safety Act, the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, and the Fair Debt Collection Practices Act. However, hearing impaired individuals have not been able to, and will not be able to, assert their rights under those laws if they are not provided access to the Federal judicial system.

Certainly, it cannot be assumed that without specific statutory direction, judges, even of the most enlightened courts, will assure the provision of the necessary services to enable individuals who suffer from communications disabilities to participate in judicial proceedings that threaten to deprive them of life, liberty, or property. See, for example, *Jara* v. *Municipal Court for the San Antonio Judicial District*, 145 Cal. Reptr. 847, 578 P. 2d 94 (1978). Further, a statutory enactment, and the rules and regulations that implement that enactment, must be as specific as possible to make it difficult for judges to resort to superficial and tortured interpretations in order to deny their responsibilities thereunder. See, for example, *Matter of Chatoff* v. *Public Service Commission of the State of New York*, 60 A.D. 2d 700, 400 N.Y.S. 2d 390 Third Department, 1977).

The judicial system provides court houses, judges, bailiffs, lighting, microphones, etc.—in fact, everything that is needed to provide access to justice to individuals who converse in spoken English. If we are to have a judicial system that is accessible to all, that system must provide the means of access to justice to individuals who cannot converse in spoken English. A person should be granted or denied access to justice based upon the merits or demerits of his claim, not because of his ability or inability to converse in a particular mode of communication.

The Administrative Office of the United States Courts estimate the initial cost of S. 819, the precursor of those provisions of S. 1315 dealing with hearing impaired individuals, to be $260,000. (Senate Report No. 95–569, page 10). However, recent Congressional actions may reduce that small amount even further. Irrespective of the enactment of H.R. 10228–S. 1315, in criminal proceedings, the Federal Government would have to provide interpreter services to hearing impaired individuals at its own expense. This legislation would grant the court discretionary authority to have the cost of interpreter services taxed as costs in civil actions. Also, this legislation would direct the clerk of each district court to establish a procedure for the certification of competent interpreters and to compile and keep current lists of those certified interpreters. (That is the heart of the bill; without that provision, more often than not, the requirement that a qualified interpreter be appointed would be meaningless, because none could be located.) Earlier in this Session of Congress, the Senate Committee on Human Resources reported S. 2600, proposed Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978. Part B of Title IV of that bill would authorize the Secretary of Health, Education, and Welfare to establish programs to train and certify interpreters to meet the communications needs of hearing impaired individuals throughout the country. The companion House bill, H.R. 12467, which has already been passed, contains no such provision. However, all of the Floor Managers of that bill cosponsored a bill, H.R. 11856, similar to Part B of Title IV of S. 2600, so it seems likely that conferees will accept the Senate provision when a conference is formed later in this Session.

The programs established under H.R. 12467–S. 2600 could provide the certification procedure necessary to implement those provisions of the Bilingual, Hearing and Speech Impaired Court Interpreter Act dealing with hearing impaired individuals, and the lists that must be prepared by the clerks of the various district courts could be prepared by or in cooperation with the directors of those programs.

Needless to say, I support H.R. 10228–S. 1315 enthusiastically; although I do have some misgivings about the bill as passed by the Senate. Eighty-five to ninety percent of the bill is excellent; however, the provisions of the bill providing relief to hearing impaired individuals lost a great deal of their vitality during the process of merging S. 819, as introduced by Senator Mathias, a proposed Interpreters for the Hearing Impaired Act, and S. 1315, as introduced, a proposed Bilingual Courts Act. I am attaching hereto comments I submitted to the Senate Subcommittee on Improvements in Judicial Machinery concerning specific provisions of the bill.

Also, attached hereto is an article published in the New York Supplement in August 1976, which served as the impetus for the introduction of S. 819 by Senator Mathias in February 1977.

Article of Special Interest

The Deaf Individual in a Legal Setting

by

MICHAEL A. CHATOFF*

Almost 200 years ago, Thomas Jefferson said: "Equal and exact justice to all men * * * These principles form the bright constellation which has gone before us and guided our steps through an age of revolution and reformation." This country has taken great strides to guarantee that equal justice is assured to all individuals—but much remains to be done. Legally, deaf individuals are among the truly disenfranchised. It is axiomatic that one who cannot hear, cannot understand legal proceedings. Lipreading is a very imprecise science—even in an ideal situation an adept lipreader can understand no more than 40 to 50 percent of words spoken on the lips, but a courtroom proceeding is far from an ideal situation—different people speak in rapid succession so that a person attempting to read the speakers' lips must swivel his head as if he were at a tennis match. Further, the tone of some communications can be gleaned from the gestures of the speaker, but frequently a deaf individual will find it difficult to determine who the speaker is at any one time. Also, it should be noted that many deaf individuals have little or no usable speech—because the development of speech requires that an individual hear his own voice as well as the voices of others.

Clearly, in a criminal proceeding, a deaf individual cannot confront (in the Constitutional sense) the witnesses against him or consult with or assist counsel—unless his deafness is compensated for in some way. An interpreter should be appointed for him as a matter of right. A qualified interpreter can interpret the proceedings into sign language (fewer than one half of the deaf individuals in this country know sign language, because most schools for the deaf and many educators of the deaf are opposed to teaching deaf students any form of manual communication), transcribe them, or use any other technique designed to convey the meaning of the proceedings to the deaf individual and to convey the testimony of the deaf individual to the court. True, the simultaneous transcription of the proceedings will slow the legal process, but the alternative will be to deny the defendant, solely because of his deafness, the Constitutional rights that are his due. It would be ludicrous for the Federal Government or a State Government to place in jeopardy the life, liberty, or property of a deaf

* Mr. Chatoff is a member of the Bar of the State of New York and a legal editor with West Publishing Company.

individual and then to deny that individual the right to defend himself, solely because of a physical disability that can be compensated for. *See Mothershead v. King*, 112 F.2d 1004 (Eighth Circuit, 1940); and *Ralph v. State*, 124 Ga. 81, 52 S.E. 298 (1905).

In a far-sighted opinion, fifty years ago a State judge noted the problems of a deaf defendant in a criminal proceeding: "In the absence of an interpreter it would be a physical impossibility for the accused, a deaf-mute, to know or to understand the nature and cause of the accusation against him, and, as here, he could only stand by helplessly, take his medicine, or whatever may be coming to him, without knowing or understanding, and all this in the teeth of the mandatory constitutional rights which apply to an unfortunate deaf-mute, just as it (sic) does to every person accused of a violation of the criminal law * * * Mere confrontation would be useless * * * bordering upon the farcical, if the accused could not hear or understand the testimony." *Terry v. State*, 21 Ala.App. 100, 105 So. 386 (1925).

To date, more than thirty States[1] have enacted laws providing for the appointment of an interpreter for a deaf defendant in a criminal proceeding. Although those laws represent a substantial beginning, the Federal Government and almost two-fifths of the States have no statutory provisions to protect the rights of a deaf defendant. Further, not one of the existing State statutes is even arguably adequate, for one or more of the following reasons. They:

1. Provide for the translation of the proceedings into sign language only (thereby denying a deaf individual who does not know sign language his Constitutional rights, for that reason alone; *Cf. Ferrell v. State*, 479 S.W.2d 916 (Texas Crim.App., 1972));
2. Require a deaf individual to request affirmatively the assistance of an interpreter (an unlikely occurrence inasmuch as most deaf individuals are unfamiliar with the law);
3. Fail to provide for the appointment of an interpreter at critical stages in the criminal process that precede trial, i. e., arraignment, line-up (essential steps at which accused individuals are supposed to be accorded all Constitutional rights);
4. Fail to provide for Governmental payment for the services of an interpreter (thereby requiring a deaf individual, who more often than not is a low-income individual, to pay for such services, to assure him rights due him under the Federal and State Constitutions; *See Myers v. County of Cook*, 34 Ill.2d 541, 216 N.E.2d 803 (1966)); or

[1] Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin.

5. Fail to provide for the certification and registration of interpreters for deaf individuals (thereby making it all but impossible for judges, except in large municipalities, to locate a qualified interpreter).

Although there are some similarities in the legal problems experienced by deaf individuals and by mentally incompetent individuals and individuals who speak a language other than English, the problems of individuals in the three groups differ considerably, and any attempt to assure the rights of more than one group in one piece of legislation will result most assuredly in the denial of rights to all concerned. Except in rare instances, a physical disability, such as deafness, can be compensated for if the necessary effort is made. Although I do not profess to know or understand all the problems of mentally incompetent individuals, it is my belief that little can be done in a legal setting to compensate for a mental deficiency. Of course, the problems of an individual who is unable to speak a particular language can in no way be compared with the problems of an individual who has lost one of the two major senses.

The right of a deaf individual to an interpreter in a criminal proceeding would appear to be irrefutable. Several of the above-referred to State statutes provide for the appointment of an interpreter for a deaf individual in a civil proceeding as well. The Constitutional right of a deaf individual to the appointment of an interpreter in a civil proceeding remains unclear, although the case of *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971) and the decisions following hold that an individual cannot be denied "access to the courts" in civil matters. Inasmuch as a deaf individual who has not been provided with an interpreter will be shut out of the courtroom as surely as if the doors had been locked and the key thrown away, he may well be denied the "access to the courts" that is his Constitutional right.

Helen Keller stated on several occasions that deafness is a more severe disability than blindness because of the difficulty it creates in communications between individuals. However, it is not my purpose to pit the deaf against the blind—each reader can decide for himself which disability he considers the more severe. But either, or even both, can be lived with if others who are in a position to do so take the necessary steps to compensate for that disability. As a matter of humaneness alone, individuals capable of assuring deaf individuals an opportunity to understand proceedings that threaten to deprive them of their freedom ought to seize the opportunity. But the problem is more than one of humaneness; it seems incontestable that any legal system that seeks to deprive an individual of his liberty must accord him the chance to defend himself.

The following is a model bill to provide interpreters in criminal and civil proceedings in United States District Courts for hearing impaired defendants, parties, and witnesses. Much of the bill is derived from S. 565, a proposed Bilingual Courts Act, passed by the U. S. Senate on July 14, 1975.

PROCEEDINGS INVOLVING HEARING IMPAIRED INDIVIDUALS

Sec. 2. (a) Chapter 119 of Title 28, United States Code, is amended by adding at the end thereof the following new section:

§ 1827. Proceedings involving the hearing impaired

(a)(1) In any criminal action, whenever the judge determines, on his own motion or on the motion of a party to the proceedings, that (A) the defendant, because of hearing impairment, does not speak or understand the English language with a facility sufficient for him to comprehend either the proceedings or the testimony, or (B) in the course of such proceedings, testimony may be presented by any person who because of hearing impairment does not speak or understand the English language, the court in all further proceedings in that action, including arraignment, hearings, and trial, shall order that (1) the proceedings be conveyed to that party or witness in a language or other mode of communication that he understands and (2) the testimony of that party or witness be interpreted into English for the court by an interpreter in accordance with the provisions of subsection (b) of this section.

(2) In any civil action, whenever the judge determines on his own motion or on the motion of a party to the proceedings, that (A) a party, because of hearing impairment, does not speak or understand the English language with a facility sufficient for him to comprehend either the proceedings or the testimony, or (B) in the course of the proceedings, testimony may be presented by any person who because of hearing impairment does not speak or understand the English language, in all further proceedings in that action, including hearings and trial, the court shall order that (1) the proceedings be conveyed to that party or witness in a language or other mode of communication that he understands and (2) the testimony of that party or witness be interpreted into English for the court by an interpreter in accordance with the provisions of subsection (b) of this section.

(3) In any criminal or civil action, the judge, on his own motion or on the motion of a party to the proceedings, may order all or any part of the testimony of the hearing impaired individual and the interpretation thereof to be electronically recorded (visually) for use in verification of the official transcript of the proceedings.

(4) The defendant in any criminal action, or a party in any civil action, who is entitled to an interpretation under this section, may waive the interpretation in whole or in part; the waiver must be expressly made by the defendant or party upon the record and approved by his attorney (if he be a defendant) and by the judge. An interpreter shall be used to explain the nature and effect of the waiver to the hearing impaired defendant or party.

(5) The term "judge" as used in this section shall include a United States magistrate, a hearing examiner, and a referee in bankruptcy.

(b)(1) The district court in each judicial district shall maintain on file in the office of the clerk of the court a list of all persons in that district who have been certified as interpreters for the hearing impaired by the Director of the Administrative Office of the United States Courts under section 604(a)(12) of this title.

(2) In any action where the services of an interpreter are required to be utilized under this section, the court shall obtain the services of a certified interpreter from within that judicial district, except that, where there are no certified interpreters in that judicial district, the court, with the assistance of the Administrative Office of the United States Courts, shall determine the availability of and utilize the services of certified interpreters from a nearby district. When no certified interpreter is available from a nearby district, the court shall obtain the services of an otherwise competent interpreter. If the interpreter appointed by the court is unable to communicate effectively with the defendant, party, or witness, as the case may be, the court shall dismiss such interpreter and appoint another interpreter.

(c) The analysis of chapter 118 of title 28, United States Code, is amended by adding at the end thereof the following new item:

§ 1827. Proceedings involving the hearing impaired

FACILITIES AND PERSONNEL FOR PROCEEDINGS INVOLVING THE HEARING IMPAIRED

Sec. 3. Section 604(a) of title 28, United States Code, is amended—

(1) by redesignating paragraph (12) as paragraph (13); and

(2) by inserting immediately below paragraph (11) the following new paragraph:

(12) Under section 1827 of this title, (A) prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in proceedings involving the hearing impaired and in so doing shall consider the education, training, and experience of those persons; (B) maintain an updated list of all interpreters certified by him, and report annually on the frequency of requests for, and the use and effectiveness of interpreters in proceedings involving the hearing impaired; (C) provide, or make readily available to each district court, appropriate equipment and facilities for the interpretation of proceedings involving the hearing impaired; (D) prescribe, from time to time, a schedule of reasonable fees for services rendered by such interpreters and in those districts where the Director considers it advisable based on the need for interpreters for the hearing impaired, authorize the employment by the court of such certified full-time or part-time interpreters; and (E) pay out of moneys appropriated to the judiciary for the conduct of proceedings involving the hearing impaired the amount of interpreters' fees or costs of recording which may accrue in a particular proceeding, unless the court, in its discretion, directs that all or part of those fees or costs incurred in a civil proceeding in which the interpreter is utilized pursuant to section 1827(a)(2) of this title be apportioned between the parties or allowed as costs in the action.

APPROPRIATIONS

Sec. 4. There are hereby authorized to be appropriated to the Federal judiciary such sums as may be necessary to carry out the amendments made by this Act.

EFFECTIVE DATE

Sec. 5. The amendments made by this Act shall take effect on October 1, 197 .

Rules 28 of the Federal Rules of Criminal Procedure, 43(f) of the Federal Rules of Civil Procedure, and 604 of the Federal Rules of Evidence should be amended to conform to the provisions of the Interpreters for the Hearing Impaired Act.

APPENDIX 3

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., October 17, 1978.

Hon. DON EDWARDS,
Chairman, Civil and Constitutional Rights Subcommittee,
Judiciary Committee,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed please find copy of the translations made by CRS of the letters from Mr. Pierre E. Vivoni, Public Defender of the United States for the District of Puerto Rico, dated June 16, 1978 and of the letter from José H. Picó, Esq., dated July 27, 1977, supporting and endorsing the use of the Spanish in the Federal District Court for the District of Puerto Rico.

Please include them in the record for the hearings of H.R. 10228.

Cordially,

BALTASAR CORRADA,
Member of Congress.

Enclosures.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., June 16, 1978.

[Translation—Spanish]

DEAR COMMISSIONER: Our office has received from the Office of Court Administration in Washington (?) a copy of Senate bill 1315, according to which Spanish would be allowed in the Federal Court in Puerto Rico.

Through means of this letter I would like to state to you my unconditional support for this bill which would be a very meaningful step in justice for our people. In the area of criminal law, which is what our office deals with, I believe that it would have no parallel for the true exercising of the rights and guarantee that every accused person must have in a penal process and which our constitution guarantees.

Knowing the upward movement and the sense of justice that you have always displayed throughout your career as an excellent public servant, I am sure that you will support the bill as far as your office will allow.

I want you to know, therefore, the personal and official opinion of one of the persons affected by the approval or non-approval of such a measure.

PIERRE E. VIVONI,
Public Defender of the United States,
for the District of Puerto Rico.

Translated by Deanna Hammond, Language Services Section, October 12, 1978.

FEDERAL PUBLIC DEFENDER'S OFFICE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
SAN JUAN, PUERTO RICO 00904

PIERRE E. VIVONI
FEDERAL PUBLIC DEFENDER

TELEPHONE (809) 723-1301
P. O. Box 3832

JUN 23 1978

16 de junio de 1978

Hon. Baltazar Corrada del Río
Comisionado Residente en Washington
Cámara de Representantes
Congreso de los Estados Unidos de América
Washington, D. C. 20515

Estimado señor Comisionado:

Nuestra oficina ha recibido desde la Oficina de Administración de los Tribunales en Washington copia del proyecto S 1315, por virtud del cual el español podría usarse en el Tribunal Federal en Puerto Rico.

Quiero por la presente manifestarle mi apoyo incondicional para esta disposición que sería un paso de gran sentido de justicia para nuestro pueblo. En la materia de derecho criminal, que es la que nuestra oficina trata, creo que no tendría paralelo para el verdadero ejercicio de los derechos y garantías que debe gozar todo acusado en un proceso penal y que consagra nuestra constitución.

Conociendo la vertical trayectoria y sentido de justicia que su señoría a través de su carrera de excelente servidor público siempre ha desplegado, estoy seguro que apoyará hasta donde las facultades de su cargo le permitan el referido proyecto.

Quiero por este medio que conozca la opinión personal y oficial de mi cargo como una de las personas afectadas con la aprobación o no aprobación de semejante medida.

Cordialmente,

PIERRE E. VIVONI
Defensor Público de los
Estados Unidos para el
Distrito de Puerto Rico

mde

The Library of Congress
Congressional Research Service
Washington, D.C. 20540

[Document 2]

Dear Balta:

I have read the tentative draft of the bill that you are thinking of placing before the House of Representatives with the purpose of allowing processes before Federal District Courts to be in Spanish whenever the interest of justice so requires and which you so generously sent me for my comments and recommendations, with your letter of July 11, 1977.

I have also been examining the documents that you sent me with it on Bilingual Court Proceedings, the reports on Senate bills 565 and 1724 as well as the interesting article from California Law Review, Vol 63, p. 762, "Interpreters for the Defense: Due Process for the NonEnglish-Speaking Defendant," by William B.C. Chang and Manuel U.Araujo. I also had the opportunity to talk with several people about this matter.

Although there obviously exist difficulties that would have to be overcome with respect to the adoption of the Spanish language in procedures before U.S. District Courts, such as the terminology, the jury, the visiting judges, the language of the officials of the court, the shorthand recorders and the language of other persons in these procedures before the court, I feel, that in criminal cases, the need that not knowing English presents for the accused who only knows Spanish has to be the first priority, and that it must be imposed above all those considerations -- not the least of which is the cost which can be involved with the adoption of this measure. In U.S. ex rel Negrón vs. New York 310 Federal Supplement 1304 (EDNY), aff'd, 434 F. 2d. 386 (2d. Cir., 1970), it was recognized that in order to grant Negrón his rights to confrontation it was necessary, under the circumstances that he be provided with a simultaneous translation of what was being said so that he could communicate with his lawyer and allow him to effectively counterinterrogate those withesses who were speaking English in order to be able to prove their credibility, memory and precision of observation in light of the version of the facts given by Negrón.

It must be recognized, as said in the report on the bilingual judicial proceedings that accompanied Bill 565 of the Senate, on pg. 6, that in Puerto Rico Spanish is the first language and that the majority of the Puerto Ricans, although taught English as a compulsory secondary language in the Puerto Rican school system, where Spanish is the official language of instruction, in accordance with the 1970 census,

57.3 per cent of the Puerto Ricans over the age of 10 do not speak English; in addition, as a result, a substantial number of the accused in criminal cases in the U.S. District Court for the District of Puerto Rico are persons who do not speak English; and also that in civil cases many parties and witnesses do not speak Spanish.

At the same time, it must be recognized that Spanish is the mother language of 83 per cent of the PUerto Ricans residing in the U.S.; and that the statistics from the census show that 30 per cent of the Puerto Ricans above the age of 10 cannot write and read the English language (pg. 5 of the report).

In addition, it must be realized that a representative of the Instituto de Gerencia de Cortes testified that there are 8 million people of Spanish-speaking origin in the Southeast and far West and that approximately 47 per cent cannot easily read and write English; and that, in addition, there is a number of people of Cuban antecedence localized in Florida and other states and they have difficulties with the language. (pgs. 5 and 6 of the same report).

And, if we also consider that, in accordance with pg. 5 of that report, that the 1970 Census indicated 1,518,000 people of Puerto Rican origin living in the U.S., we have to conclude that, in effect, the problem is a serious one, which greatly affects a group of Spanish-speaking people who would not have the advantage of understanding procedures in an English-speaking court.

In the article on "Court Interpreters," from the California Law Review, it is said that the requirements of equal protection from the laws and due process of law make mandatory a constitutional right to interpreters who will carry out the tasks for the accused who do not speak English (pg. 804). (I believe, that even with an interpreter, the accused cannot understand with absolute precision all of the proceedings that are carried out against him, in particular the arguments of the lawyers.)

Saying that Spanish was the language to be used in the judicial procedures followed in the tribunals of the Commonwealth of PUerto Rico, the Honorable Supreme Court of Puerto Rico, through the voice of then Judge don Luis Negrón Fernández, in the case of Pueblo vs. Tribunal Superior, 92 DPR 596, pgs. 604 to 606:

The determining factor with respect to use of language in judicial procedures followed in the Commonwealth of PUerto Rico does not arise from the Law of Feb. 21, 1902 (4) which Rout invoked in support of his position that the trial be held in English because he didn't know Spanish. (5) It comes from the fact that the means of expression of our people is Spanish and that is a reality that cannot be changed by any Law. (6) Spanish is the language in which judicial matters have been conducted in more than 15,000 cases (criminal) and more than 32,000 civil cases in 1963-54 by the Superior Courts and in more than 220,000 criminal cases (including 145,000 traffic) and more than 28,000 civil cases resolved during the same period in the District Court. The determining factor establishes the need that the trial of anyone accused combine those ingredients of due process of law, impartial judgment and just judgment, effective defense and equal justice which are guaranteed in the constitution and laws, regardless of the language used in the procedures. The citizen has, among others, the right to be informed of the nature of the charge against him and to confront the witnesses, in addition to having the right to communicate with his lawyer during the procedings, for which understanding what is happening during the trial is essential. If the accused does not know the language being followed in the procedings, it is imperative, by natural reason spelled out by guarantees in the constitution concerning the due process of law, of just trial of effective defense and equal justice, that measures be facilitated so that he can understand and be aware of the steps of the trial in which his freedom can be at stake. Among those means is the designation of translators to put into his language what is produced in the court in a language other than that of the accused.

(6) The Law of Federal Relations in its Art. 42 provides that the allegations and procedures in the District Court of the United States for Puerto Rico will be in the English language; and in Art. 44 establishes as one of the requirements that must be filled by the person who serves on the jury in said Court, that he "have a sufficient knowledge of the English language to be able to serve duly as a jurist." These requirements are in harmony and preserve the tradition that judicial procedings be conducted in the English language throughout all of the federal jurisdiction.

> In what refers to judicial procedures in the courts, the law of February 21, 1902, by saying that "the Spanish and English languages will be used indiscriminately" can only have directive range cf RCA Communications vs. Registrador, 79 DPR 77 (1956) and does not confer the right of option, neither to the accused nor to his lawyer, to choose the language in which the proceedings must be conducted. It is up to the judges, not ths lawyers, to decide the direction of the procedings in the court and the adoption of measures that will guarantee the accused a trial. Spanish being the language of the Puerto Ricans, judicial procedures in our courts must be followed in Spanish, but the judges will take those measures which may turn out to be necessary so that, in protection of the rights of any accused who does not know our language well enough, he and of course his lawyer will have the right to an effectively informed defense, by means of translators or another effective means, informed of all that happens in the trial and so that the records thus show this to be the case."

I consider those words of the Hon. Judge Negrón Fernández to be wise ones and illustrative of this material which is of interest to us.

in summary then, although I am aware of the serious difficulties that the adoption of Spanish in district court procedings may bring, I believe that that must be considered of less importance than the right of the accused to understand the procedings that are being held against him. (Although I feel that the parties in the civil procedings must also have the need for that knowledge, it seems to me that it is not as important, as in the case of an accused.) Therefore, I understand that all obstacles must be overcome, or the attempt to do so made, to achieve the adoption of the bill that you are proposing, and that it deserves from persons of Spanish-speaking origin - even those of us who know and understand the English language - the greatest desire and endorsement so that your proposal will be adopted.

Cordially,

José H. Picó

BUFETE Y NOTARIA
LCDO. JOSE H. PICO
(LAW OFFICES)

FOMENTO BUILDING-SUITE 642
HATO REY, P. R. 00918

TEL. (809) 764-4666

27 de julio de 1977

Hon. Baltasar Corrada del Río
Comisionado Residente de P..R.
en Estados Unidos de América
House of Representatives
1319 Longworth House Office Bldg.
Washington, D. C. 20515

Re: N/E: 25-210-77

Estimado Balta:

He leído el "tentative draft" del proyecto de Ley que estás considerando radicar ante la Cámara de Representantes de los Estados Unidos, con el propósito de disponer que los procedimientos ante los Tribunales Federales de Distrito sean en español cuando el interés de la Justicia lo requiera, y que tan bondadosamente me referiste, para mis comentarios y recomendaciones, con tu carta del 11 de julio de 1977.

He estado examinando también los documentos que con él me enviaste, sobre "Bilingual Court Proceedings", los informes sobre los proyectos del Senado 565 y 1724, así como el interesante artículo del California Law Review, Vol. 63.. 762 "Interpreters for the Defense: Due Process for the Non-English-Speaking Defendant", por William B. C. Chang y Manuel U. Araujo. También tuve la oportunidad de conversar con varias personas sobre este asunto.

Aunque, obviamente, existen dificultades que habría que vencer en cuanto a la adopción del idioma español en los procedimientos ante los Tribunales de Distrito de los Estados Unidos, tales como la apelación, el jurado, los jueces visitantes, el idioma de los funcionarios del Tribunal, los taquígrafos reporters y el idioma de otras personas en esos procedimientos ante el Tribunal, considero, que en casos criminales, la necesidad que representa para el acusado que no conozca el inglés, y que solamente conozca el español, tiene que ser la primera prioridad, y que debe imponerse sobre todas esas consideraciones-no la menor de las cuales representa el costo que pueda conllevar la adopción de esta medida. En U. S. ex rel Negrón vs. New York 310 Federal

Supplement 1304 (E.D.N.Y.), aff'd, 434 F. 2d. 386 (2d. Cir., 1970), se reconoció que de manera que se le pudiera reconocer a Negrón sus derechos a confrontación, era necesario, bajo las circunstancias, que ee le proveyera a él una traducción simultánea de lo que estaba eiendo dicho para que él pudiera comunicarse con su abogado y permitirle a éste efectivamente contrainterrogar aquellos testigos que hablaran inglée para poder comprobar su credibilidad, su memoria, y su precisión de obeervación, a la luz de la versión de los hechos por Negrón.

Debe consideraree, como se expone en el Informe sobre loe procedimientos judiciales bilingüee que acompañó al proyecto 565 del Senado, a la página 6, que en Puerto Rico el español es el lenguaje primario y que la mayoría de los puertorriqueños, aunque se enseña inglée como un lenguaje compùlsorio eecundario en el sistema de escuelas de Puerto Rico, donde el español es el lenguaje oficial de instrucción, de acuerdo al Censo de 1970, 57.3% de los puertorriqueños sobre la edad de 10 años no hablan inglée; además de que, como resultado de ello, un sustancial número de los acusados en casos criminales en el Tribunal de Distrito de los Estadoe Unidos para el Distrito de Puerto Rico, son personas de habla no inglesa; y qúe, también, en loe casoe civiles muchas partee y testigos no hablan español.

Igualmente, debe considerarse también, que el español es la lengua madre del 83% de los puertorriqueños residiendo en los Estados Unidos; y que las estadísticas del Censo indican que el 30% de los puertorriqueños sobre la edad de 10 años no pueden leer y escribir el lenguaje inglés (pág. 5 de ese mismo informe).

Además, debe tenerse presente que un representante del Instituto de Gerencia de Cortee testificó que hay 8 millones de personas de origen de habla española en el Sureste y el lejano Oeste y que aproximadamente 47% no pueden fácilmente hablar y escribir el inglés; y que, en adición, hay un número de personas de antecedencia cubana localizadas en Florida y otros estados, que tienen dificultades de lenguaje (págs. 5 y 6 de dicho propio informe).

Y, ei consideramos además, que de acuerdo a la propia pág. 5 de dicho informe, el Censo de 1970 eeñalaba a 1,518.000 pereonas de antecendencia puertorriqueña residiendo en los Estados Unidos, tenemos que concluir, que, efectivamente, el problema es uno profundo, que afecta grandemente a un nutrido grupo de personae de habla española que no tendrían la ventaja de entender los procedimientos en una Corte de habla inglesa.

El citado artículo sobre "Court Interpreters", del California Law Review, supra, argumenta que loe requisitos de igual protección de las leyes y debido procedimiento de Ley hacen mandatorio un derecho constitucional a intérpretes que realicen dichas

tareas para acusados que no hablen inglés (pág. 804). (Yo pienso, que áun con un intérprete,, el acusado no puede entender con toda precisión todos los procedimientos que se llevan a cabo en su contra, en particular los argumentos de los abogados.)

Deciciendo que el español era el idioma a emplearse en los procedimeintos judiciales seguidos en los tribunales del Estado Libre Asociado de Puerto Rico, ha expresado el Honorable Tribunal Supremo de Puerto Rico, por voz del entonces Juez Presidente, don Luis Negrón Fernández, en el caso de Pueblo vs. Tribunal Superior, 92 DPR 596, a las páginas 604 a la 606:

> "El factor determinante en cuanto al idioma a emplearse en los procedimientos judiciales seguidos en los tribunales del Estado Libre Asociado de Puerto Rico no surge de la Ley de 21 de febrero de 1902(4) que invocó el letrado Rout en apoyo de su petición de que el proceso se ventilará en inglés porque él no dominaba el español.(5) Surge del hecho de que el medio de expresión de nuestro

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(4) La Sec. 1 de la referida Ley de 21 de febrero de 1902 (1 L.P.R.A. sec. 51) dispone: "En todos los tribunales de esta isla y en todas las oficinas públicas, se emplearán indistintamente los idiomas inglés y español; y cuando sea necesario, se harán traducciones e interpretaciones orales de un idioma al otro, de modo que las partes interesadas puedan comprender cualquier procedimiento o comunicación en dichos idiomas".

(5) El abogado Robert H. Rout fue admitido por este Tribunal, mediante moción y sin examen bajo las dispociiones de la antigua Regla 8 (b) de nuestro Reglamento, al ejercicio de la abogacía en Puerto Rico. Prestó su juramento en español el 31 de enero de 1959. En la declaración jurada en apoyo de su moción expuso que residía en Puerto Rico desde el 1ro. de febrero de 1958 y que tenía la intención de continuar residiendo aquí con su familia.

pueblo es el español y esa ee una realidad que no puede ser cambiada por ninguna Ley (6). El español es el idioma en el que se han seguido los trámites judiciales en más de 15,000 caeoe criminalee y en máe de 32,000 casos civiles resueltos en el año 1963-64 por el Tribunal Superior y en más de 220,000 caeos criminales (incluyendo 145,000 de tránsito) y máe de 28,000 casos civiles resueltos en el mismo período por el Tribunal de Dietrito. El factor determinante lo establece la neceeidad de que el proceso de todo acusado reuna aquellos ingredientes del debido proceso de ley, de juicio imparcial y justo, de defensa efectiva y de igual justicia que le garantizan la Constitución y las leyes, no importa en que idioma se conduzcan los procedimientos. Para ello el ciudadano tiene, entre otros, el derecho a ser informado de la naturaleza del cargo que ee le imputa y de confrontarse con los testigos de cargo, aparte de tener derecho a comunicarse durante el proceso con su abogado, para lo cual ee indispensable que entienda lo que ocurre en el juicio. Si el acusado no conoce la lengua en que ee siguen los procedimientos, imperativo ee, por la razón natural que fundamenta las garantías constitucionales del debido proceso de ley, de juicio justo, de defensa efectiva y de igual justicia, que se le faciliten los medioe para que pueda entender y estar al tanto de loe trámitee del proceso en el cual su libertad puede eetar en juego. Entre esoe medios eetá la designación de traductores para poner en su idioma lo que en idioma distinto al del acusado se produzca en corte.

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(6) La Ley de Relaciones Federales en su Art. 42 provee que las alegaciones y procedimientos en la Corte de Distrito de los Estados Unidos para Puerto Rico se harán en el idioma inglés; y en su Art. 44 establece como uno de los requieitos que ha de llenar la persona que haya de servir de jurado en dicha Corte, el que "tenga suficiente conocimiento del idioma inglés para poder servir de jurado debidamente." Estos requisitos están en armonía y conservan la tradición de que los procedimientos judiciales se conduzcan en el idioma inglés a través de toda la jurisdicción federal.

Hon. Baltasar Corrada del Río 27 de julio de 1977

> En lo que concierne a los trámitee judiciales en los tribunales, la ley de 21 de febrero de 1902, al disponer que "se emplearán indistintamente los idiomas inglés y español" sólo puede tener alcance directivo, cf RCA Communications vs. Regietrador, 79 DPR 77 (1956) y no confiere un derecho de opción, ni al acusado ni a su abogado, para elegir el idioma en que se deba ventilar el proceso. Corresponde a los jueces, no a los abogados, la dirección de los procedimientoe en el tribunal y la adopción de medidas que garanticen un juicio a los acusados.. Siendo el español el idioma de los puertorriqueños, los procedimientos judiciales en nuestroe tribunales deben eeguirse en español, pero loe jueces tomarán anquellae medidas que resulten necesarias para que, en protección de los derechos de cualquier acusado que no conozca suficientemente nuestro idioma, se mantenga a éste-y desde luego a su abogado por ser ello parte de su derecho a una defensa efectiva-informado, por medio de traductores o de otro modo eficaz, de todo lo que transcurra en el proceso, y para que aeí lo revele el record".

Considero sabias esas palabras del Hon. Juez Negrón Fernández, y eignificativamente ilustradoras en esta materia que noe ocupa.

Resumiendo pues, aunque estoy consciente de las serias dificultades que puede conllevar la adopción del español en los procedimientos de las cortes de distrito, creo que ello debe ceder ante el derecho del acusado a entender los procedimientos que ee ventilen en su contra. (Aunque considero que las partes en los procedimientos civiles también deben tener la necesidad de ese conocimiento, me parece que no es tan patente, como en el caso de un acusado). Por ello, entiendo que deben tratar de vencerse todos los obetáculos, para lograr la adopción del proyecto que tú proponee, y que merece de las personas de origen de habla hispana-aún aquellos que conocemos y entendemos el idioma inglés también-el mejor deseo y endoso para que así pueda ser adoptada tu propuesta.

Cordialmente,

José H. Picó

JHP/mma

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., September 11, 1978.

Hon. DON EDWARDS,
Chairman, Civil and Constitutional Rights Subcommittee,
Judiciary Committee,
Rayburn, House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed please find copy of the statement of the Puerto Rico Civil Rights Commission regarding the bill H.R. 10129, "The Bilingual Court Act". I will appreciate its inclusion on the record for the hearings on this bill.

I believe the Chairman of the Commission should be called as a witness when the Subcommittee goes to Puerto Rico for the next round of hearings.

Cordially,

BALTASAR CORRADA,
Member of Congress.

Enclosure.

STATEMENT OF THE CIVIL RIGHTS COMMISSION OF THE COMMONWEALTH OF PUERTO RICO WITH REGARD TO SENATE BILL 1315, WHICH WOULD ENACT THE "BILINGUAL, HEARING AND SPEECH IMPAIRED COURT INTERPRETER ACT" OF THE UNITED STATES

Senate Bill 1315 (H.R. 10129, November 29, 1977) pretends to provide more effectively for the use of interpreters in the courts of the United States, a bill, if approved, may be cited as the "Bilingual, Hearing, and Speech Imparied Court Interpreter Act". Sections 3 and 4 of the aforementioned bill, provides, respectively, that the initial pleadings in the Federal District Court for Puerto Rico may be filed in either the Spanish or English language and all further pleadings and proceedings shall be in the English language, unless upon application of a party or upon its own option, the court, in the interest of justice, orders that the further pleadings or proceedings, or any part thereof, shall be conducted in the Spanish language; the written orders and decisions of the court shall be in both the Spanish and English languages; if an appeal is taken of a trial or proceeding conducted in whole or in part in the Spanish language, the record or necessary portions of it, shall be translated into the English language; the cost of the translation shall be paid by the district court or by the parties, as the judge may direct; all appellate documents shall be in the English language; and, that no person shall be disqualified for service on a grand or petit jury summoned in the Commonwealth of Puerto Rico solely because such person is unable to speak, read, write, and understand the English language if such person is able to speak, read, write and understand the Spanish language.

The Civil Rights Commission of the Commonwealth of Puerto Rico fully endorses the particulars of said bill, specially those aspects which pertain to the unique language situation of the community which serves the United States District Court for the District of Puerto Rico.

There is no need to ascertain further that Puerto Rico is almost totally a Spanish language community, and 98 percent of the persons who reside in Puerto Rico has Spanish as its vernacular language. An average command and understanding of the English language, in spite of educational efforts toward the teaching and learning of English in the Commonwealth public school system as well as in the private schools, is not a reality in our Island as a day-to-day vehicle of expression or understanding, and much less as we confront the complexities of any judicial proceeding, be it criminal or civil.

We anticipate that with the approval of the bill two main objectives could be attained:

1. Criminal and civil proceedings will become more meaningful to the parties, particularly in criminal prosecutions, and the public. Judicial proceedings are not only the professional responsibility of judges, court personnel or attorneys, it is also the drama where the parties or accused, the witnesses, the jury, and the public, deposit the trust for the affirmation of law and the realization of justice.

The fundamental rights of life, liberty and property with the specific or particular constitutional or statutory guarantees which concretized them and which

may be at stake at any criminal or civil proceeding, requires for the parties a meaningful understanding and readiness to react to what may happen in court. Also, the failure to understand the English language by the majority of the people of Puerto Rico, in a context of a federal court which rests its proceedings in English only, though it offers at present the service of interpreters or translators, contributes to develop and reaffirm a sense of alienation from the possibilities of seeking federal jurisdiction, with regard to the numerous federal legislation which protects and guarantees important rights and possibilities for the welfare of the poeple eligible.

2. Grand and petit juries will represent a more real cross section of Puerto Rico.

Language in the context of court proceedings should serve the values of meaningful understanding and faithful apprehension of what it is plead, said, read or decided with regard to the case. We anticipate that an expertly done interpretation or translation could remedy the apparent disabilities and apprehensions of some. The courts as an institution of judges and attorneys would not be isolated from the body of law developed throughout the rest of the federal system. The language reality of Puerto Rico together with the political and juridical conditions which relate our Island with the United States, has required to our judges—since 1953, Puerto Ricans and a majority of the attorneys—who have Spanish as a vernacular language—to understand the English language and we cannot anticipate that such professional necessity will vary with the approval of this bill.

Any lawyer who decides to practice in the Federal District Court for Puerto Rico—no matter which language he uses at the forum—cannot avoid the professional responsibility of needing *velis nolis* to understand the English language not only as a vehicle of forum expression but as a necessary instrument of juridical research and professional knowledge. The case of the lawyers is not a right to be preserved for them but what should be the professional qualifications to render the service which is expected of them as experts in law finding and litigation. In a related vein we should add that there is a universal rule of interpretation of law—and of functioning in accordance with it—that in case of discrepancy between different language texts of a statute, the text of origin must prevail or shall be given preference; the same principle should operate with regard to the pleadings, orders, decisions, case law, and declarations of witnesses. See: Article 13 of the *Puerto Rico Civil Code*, 1930; Title 31 of the *Puerto Rico Laws Annotated*. Section 13, for an example of this principle, annexed. (It should be known that there is an official translation of the laws of the Commonwealth of Puerto Rico—*Laws of Puerto Rico Annotated*—and the decisions of the Puerto Rico Supreme Court—(*Puerto Rico Reports*)). The quality of interpretations and translations should be dealt in the typical manner of any adversary proceeding: through argue objections or explicit or tacit admissions, by the party or his lawyer.

We see the amendments of this bill not as something which will detract or result in a denial of equal protection of the laws or of due process for those only English-speaking persons who may be a *party* in a civil or criminal proceeding. It is not to procure or result in reverse discrimination against sole English-speaking parties or accused that the bill is directed, but to procure effective equality of treatment and participation to every party as justice and reason may realistically permit. *Cfr.*, within different contexts, *U.S. ex rel Negron v. New York*, 434 F. 2d 386 (1970): to avoid the "total incomprehension as the trial proceeded", and, *Lau v. Nichols*, 414 U.S. 563 (1974), as to the practicalities of what should be a meaningful education. For only English-speaking parties or party, proceedings must be conducted or court incidents revealed in the only language which has meaning for him, and which has been the practice until the present, and all pleadings and proceedings, inclusive the jury, should be adjusted to attend this English-speaking party reality. The same equal treatment and opportunity to appreciate and participate in the judicial process, within the Spanish-speaking party context, should be the aspect which will satisfy the approval of this Bill. And lastly, we want to emphasize that the jury selection should not be conditioned as is presently, which normatively dictates a *general* disqualification for such service because of inability to understand the English language, but that does not signify that any juror is particularly qualified to adjudicate facts from a language that such juror does not understand.

Because of these general considerations, the Civil Rights Commission of the Commonwealth of Puerto Rico endoreses the approval of Bill—Senate 1315 (H.R. 10129).

SAN JUAN LEGAL SERVICES INC.,
San Juan, Puerto Rico, November 29, 1978.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, House Committee on the Judiciary, Rayburn House Office Building, Washington, D.C.

HON CONGRESSMAN EDWARDS: I most respectfully submit to you my statement endorsing H.R. 13950 and personally and on behalf of my people wish to thank you for your support of this measure.

I have taken the liberty of sending a copy of my statement and of this letter to my Congressman, Mr. Corrada.

I look forward to having the pleasure and honor of meeting you sometime in the future and am at your service.

I remain

Cordially yours,

MIGUEL E. HERRERO FRANK, *Esq.*

STATEMENT OF MIGUEL E. HERRERO FRANK

Mr. Chairman and members of the sub-committee:

M name is Miguel E. Herrero Frank. I am a Puerto Rican attorney and Executive Director of San Juan Legal Services, Inc.

I thank the sub-committee for the opportunity to present this statement on H.R. 13950 and the use of the Spanish language in The Federal District Court of Puerto Rico.

I wish to state, first of all, that I support H.R. 13950. I extend this support in my personal capacity as an attorney admitted to the U.S. District Court for the District of Puerto Rico since January 1957, and in my official capacity as The Executive Director of a federally funded entity that is responsible for the provision of legal services to over a quarter million U.S. citizens in the city of San Juan.

I believe that I can also speak for the more than two million poor, loyal U.S. citizens in the Commonwealth of Puerto Rico that constitute the eligible indigent clientele of legal services programs in Puerto Rico. To these humble United States citizens living in Puerto Rico, H.R. 13950 represents a step towards making Federal Judical due process more meaningful.

The use of Spanish in the U.S. District Court for the District of Puerto Rico is warranted by every conceivable criteria.

In the U.S. District Court for Puerto Rico, we find Courts presided by Puerto Rican Judges, with Puerto Rican U.S. Attorneys, with Puerto Rican defense attorney or attorneys for the parties with Puerto Rican U.S. Marshalls, Puerto Rican Clerks, Puerto Rican clients or defendants, Puerto Rican witnesses and Puerto Rican juries.

The conduct of proceedings in English in such a setting represents an anomality that can only be explsined in terms of the traditional historicsl development.

In the Commonwealth of Puerto Rico the bulk of the population do not speak English. The 1970 U.S. Census figures indicated that over half of the populations of Puerto Rico of over the age of 10 did not speak English. With respect to my experience as Executive Director of San Juan Legal Services I would say that over three quarters of our clientele are not able to communicate in English and would certainly be unable to comprehend a judicial proceeding conducted in English.

In so far as the rest of Puerto Rico, outside of the city of San Juan is concerned, my impression is that an even larger proportion of the legal services clientele population is unable to comprehend a judicisl proceeding carried out in English.

In criminal proceedings before the U.S. District Court of Puerto Rico, the vast majority of the defendants are Puerto Ricans unable to understand English. The U.S. Attorney for the District of Puerto Rico has, I believe, already provided you with data indicating that in 90 to 95 percent of the criminal cases heard on their merits, after return of a true bill by the grand jury, an official court interpreter was granted because the defendants could not understand the proceedings in the English language. Typically, the poor are among those unable to understand the proceedings in English.

The use of more than one language in a court system, in one or another manner has been successfully employed in Canada, Switzerland, India, Belgium, Yugoslavia and in other communist states. I understand that Parliament has authorized the use of Welsh in the courts of Wales. In Spain there is presently a movement

towards granting Basques, Catalans and other regional groups full use of their language in all governmental affairs. The current trend all over the world is towards giving linguistic minorities the right to the use of their vernaeular in governmental affairs, including Courts.

All of these schemes used in the different countries of the world present administrative problems not unlike those that will be presented by the use of the Spanish language in the U.S. District Court for Puerto Rico. They are part of the price that must be met if we are to move towards the implementation of a policy of maximum equality towards the three million Spanish speaking people of Puerto Rico. I most respectfully differ from the very distinguished and esteemed Judges of our Federal Court that have raised administrative objections to the implementation. My belief is that the burdens imposed by the proposed measure are a small price to pay. The problem is not one of economics or of administrative convenience but one of national policy.

The problems presented by the proposed use of Spanish in the U.S. District Court for Puerto Rico are fundamentally Administrative ones. Judges Toledo and Torruellas have both presented to this committee thoughtful statements raising these problems in some detail. Their concerns about these administrative problems should be carefully considered in so far as they imply that there must be a budgetary commitment to allocate adequate resources to assure the success of this measure and to assure that no problems will arise due to lack of funding or of the administrative flexibility necessary to implement the Spanish language Court.

In Chief Judge Toledo the U.S. District Court for Puerto Rico has one of the really great Federal District Judges and a man of outstanding leadership and administrative skills. We are most fortunate in having him, at this moment, to implement this legislation.

Among the arguments I have heard on this matter are those dealing with alleged problems of translations of Spanish proceedings into English, for appeals. I believe the opposite is true. At the present time, the District Court in Puerto Rico uses interpreters that simultaneously translate into English. Though I believe that the present system is fair, it seems to me that a system of Spanish language trials with translations from the written record will produce a better record for appeal than the present one of simultaneous translations by interpreters. The reasons for this are obvious. Interpreters in simultaneous translations have difficulties and are under pressure to get on with the proceedings. Translators working in the unhurried environment of their privacy can produce better translations. There are, of course, situations where interpreters will have to be used even if the trial is in Spanish. But this does not present problems that are any different than those we now have.

Arguments have been presented suggesting that, in the use of Spanish, serious problems will arise in dealing with pleadings and citations and use of the law. In point of fact these problems are no different than those with which the Commonwealth of Puerto Rico Courts have dealt with during the past 80 years. In the Commonwealth jurisdiction, Courts routinely deal with United States Constitutional questions, statutes, regulations and Federal cases in hearings and in pleadings submitted by attorneys and in Court decisions. Bilingualism in Commonwealth judicial activities has been a practice, as a matter of necessity, since our whole judicial and political system is grounded on Federal (i.e. English language) authority. The system works well and I do not know of any attorney (or judge) in Puerto Rico that finds it particularly difficult to work in this system. On the contrary, it is the natural environment under which we all work and we are all the better for it. We have, in Puerto Rico, a Bar with a vision and grasp of the two greatest legal systems of the world and with an ability to research into the two languages that possess the greatest and most voluminous juridical literature in the world.

Federal Courts (including the United States Supreme Court) have been acting on appeals from Puerto Rico Court Decisions (in their English translated versions of the Spanish originals) for three quarters of a century. Federal Courts routinely cite Puerto Rico Commonwealth cases (in their English translation) as authority.

I suggest that a few years after the approval of H.R. 13950 we will find that the use of the Spanish language in Federal Court will be accepted by all of us as a natural thing and we may all be wondering why it wasn't done years ago.

Lest we forget, fifty years ago judges and attorneys were supposed to know their latin and we still toss around our *res gesta* and *res ipsa loquitur*. My point

is: the law has grown from many different language sources and attorneys and judges have historically been very adept at dealing with language problems. Indeed, lawyers all over the world, are the experts in dealing with problems of language and accomplish remarkable things in handling language and translating concepts from one language and legal system into another. In this context, the use of Spanish in the U.S. District Court is really no problem.

Questions have been raised as to an official constitutional language of the United States (English) which by implication is mandatory in the proceedings of the Federal District Courts. I do not know of any authority to sustain such a position. In point of fact the very existence of any and all federal courts—other than the Supreme Court of the United States—is grounded on Congressional Authority. Article III, Section I of the Constitution of the United States.

In considering this matter it again came to my mind that the U.S. Constitution, and the Congress and Judiciary created under it, are remarkable institutions. There appear to be no limits to the innovative, creative, new things that can be done under our structure of government. This is one of them.

H.R. 13950 is a proposal of great importance and its approval will bring honor to the Congress of the United States. I endorse this legislation and urge Congress to approve it.

Testimony of Hon. Miguel A. Giménez Muñoz, Attorney General of Puerto Rico

Dear Gentlemen: My name is Miguel A. Giménez Muñoz, Attorney General of Puerto Rico, and I appear before you today to state the Justice Department's position in relation to bill of law H.R. 10129 which provides for the use of the Spanish language in the Federal District Court of Puerto Rico.

Puerto Rico, during the 80 years of mutually beneficial relationship with the United States, has managed to retain its cultural identity, while at the same time accepting its share of rights and obligations as citizens of the United States. Such rights, encompass the ability to understand and actively participate and contribute in any judicial proceeding such person might be made part of. In the case before us, the approval of H.R. 10129, which provides for the use of the Spanish language in the Puerto Rico Federal District Court, is such, that it transcends any technical inconveniences which may arise out of the implementation of the Spanish language in the Puerto Rico Federal Court.

In order to adequately assess such a proposal, I deem neeessary a brief expose of Puerto Rico's cultural situation.

Puerto Rico was acquired by the United States in 1898 as a result of the Spanish-American War. Upon that happening, Puerto Rico, a totally Spanish speaking country began a long process of assimilation. During the subsequent years, Puerto Rico's political as well as educational institutions developed in such a way that English became an important factor in every aspect of the Puertorrican way life, but fortunately, the Spanish language, one of the most important elements in our culture remained as the principal mode of expression in Puerto Rico.

Although a large segment of our people are bilingual, the country as a whole utilizes Spanish as the prevailing language. As a result of this, the Puertorrican state courts conduct their business in Spanish, thus giving the parties before it the opportunity to clearly understand processes which affect these people in the light of the reality that Puerto Rico, although composed of American eitizens is a Spanish speaking country.

The bill presented to your consideration, #H.R. 10129, contains not only a recognition of Puerto Rico's right to preserve its cultural identity, but in addition, and equally important, it grants American citizens the constitutional right to understand and actively participate in the judicial proceedings which might affect their interests.

At the present moment, the Puerto Rico Federal Court is composed of three judges, all of whom are native Puertorricans, and are perfectly qualified to conduct hearings in Spanish as well as English. These three judges' native language is Spanish, for which it would be more of a relief to conduct the hearings in Spanish than a burden, thus assisting the judges in their functions, as well as most of its employees who are also bilingual.

The majority of the lawyers in Puerto Rico, and that composes well over a 95 percent of the total of members to the bar, are native Puertorricans whose main language is Spanish. Any lawyer who at the present is required to take his claim to the federal court to seek relief, must litigate in English. This results in an impediment for local lawyers when appearing before Federal Court, and as a result only a small group of lawyers are able to appear before said court, not because English speaking lawyers are better qualified, but because many lawyers feel that their clients are entitled to the best type of representation, and their inability to master the English language properly will hinder them in providing their clients their professional services. As a result of this, only a handfull of local lawyers are able to take their cases to the federal court.

The problems encountered are not only limited to the number of lawyers able to litigate in English in the Federal Court, other matters of far greater importance are to be considered and these, which bear constitutional implications are the principal arguments in favor of the adoption of this porposed amendment.

As I have stated previously, the vast majority of the people in Puerto Rico speak Spanish as their native language. Cases brought up before the court mostly relate to matters pertaining to local residents whose case come to the Federal Court because of special statutes such as Section 1983 or in the case or criminal violations, mostly Puertorrican residents which have violated Federal Crime Statutes. This of course, in addition to the fact that most of these attorneys which represent local or foreign clients are Puertorrican.

When this matter is analyzed from the constitutional point of view, there are various substantial arguments which can be sustained. First, any defendant in a criminal prosecution is entitled to fully understand, actively participate and contribute to his defense in his trial. At present, when a defendant is not able to understand English, a court interpreter is provided. Nevertheless, such an interpreter is not able to produce simultaneous translations, but is only able to translate phrases after fully pronounced by the speaker. In addition, any of the counsels' arguments with the judge are not translated, thus, the defendant misses out on extremely important aspects of his trial.

Although it has been sustained by other people, specifically Puerto Rico's Federal District Court's Chief Judge, Hon. José V. Toledo, that the use of the Spanish language in the Federal Court should be limited to criminal cases only, there is no reason for which such a necessary innovation should be limited to the criminal area exclusively.

Not withstanding the fact that in a criminal prosecution the defendant's liberty is at stake, there is no valid reason for which there should be a distinction between personal property rights, which would be the object of litigation in most civil cases, and the right to a fair criminal trial. In these types of cases, we will find that the same elements present in a criminal prosecution would be present in a civil case.

Most of the witnesses brought for questioning in a trial will also speak Spanish. The judge will still be a native Puertorrican, the court's personnel, including all members who actively participate in a trial are Puertorrican, and the jury will also be composed of mostly Puertorricans whose understanding of the Spanish language greatly outweighs their mastery of the English language. As Judge Toledo stated in his appearance before the Committee, alternate jury wheels could be effectively implemented in order to provide English speaking jurors for English trials where both parties and the judge agree upon the use of English for those non-Spanish speaking parties.

As stated by Judge Toledo, the utilization of Spanish in the Federal Court would provide for a more ample selection of jurors, who would not be required to master English proficiently. This argument points to the fact that the jury selected by counsels from the jury wheel may not constitute a group of his peers because only English speaking jurors are selected, and of these, only those who master the language enough so as to fully understand the proceedings are allowed to enter the jury wheel. Because of various sociological and educational reasons, these jurors may not be necessarily the defendant's peers, thus providing another argument of fundamental importance in favor of using Spanish in Federal Courts.

Although the technical implications of this proposal should be the object of consideration, they should not constitute an obstacle when considering the practical implementation of Spanish in the courts. Although elements to be taken into

consideration such as transcripts upon appeals to the District Court of Appeals and their translation are important, such matters can be dealt with in a reasonably fast and efficient manner providing that adequate personnel be assigned to these functions, since the costs of these, at least in civil cases will be incurred by the appellant.

Puertorricans, as citizens of the United States have the right to enjoy the benefits of fair judicial proceedings responding to their needs. Puertorricans, as American citizens should be allowed to receive such benefits which aid in the preservation of their cultural background and language. The approval of this bill will not only provide for the needs of the Puertorrican community, but will also aid in the preservation of the Puertorrican culture while at the same time granting recognition to the need of Government to respond to the particular needs of a large segment of the citizenship. It is for these reasons that I urge you to approve the passage of this bill which in the long run, will result in a better working relationship between the United States and Puerto Rico, and the growth in respect and admiration between the two.

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